

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 402 and 403 (as enrolled)
Senate Bills 404 and 405 (as enrolled)
Senate Bills 406 through 411 (as enrolled)

PUBLIC ACTS 149 and 150 of 2001
PUBLIC ACTS 132 and 133 of 2001
PUBLIC ACTS 151 through 156 of 2001

Sponsor: Senator William Van Regenmorter (Senate Bill 402)
Senator Bev Hammerstrom (Senate Bill 403)
Senator Valde Garcia (Senate Bill 404)
Senator Christopher D. Dingell (Senate Bill 405)
Senator Bill Schuette (Senate Bill 406)
Senator Thaddeus G. McCotter (Senate Bill 407)
Senator Bill Bullard, Jr. (Senate Bill 408)
Senator Harry Gast (Senate Bill 409)
Senator Martha G. Scott (Senate Bill 410)
Senator Gary Peters (Senate Bill 411)

Senate Committee: Judiciary
House Committee: Criminal Justice

Date Completed: 4-4-02

RATIONALE

Michigan's statutes that provide punishment for property offenses generally distinguish between misdemeanors and felonies based on monetary values. It was suggested that the felony threshold should be raised for several offenses that involve illegally obtained money or property, and that graduated penalties should be established for these violations, as was done for a number of larceny offenses in 1998. Before the passage of Public Acts 311 and 312 of 1998, larceny offenses in the Michigan Penal Code typically included a felony threshold of \$100, although it was as low as \$5 (for larceny from a motor vehicle or trailer) or as high as \$500 (for use of utility service without consent). For simple larceny, the \$100 threshold had remained unchanged since 1957. In the ensuing years, the effect of inflation alone made felonies out of offenses that once would have been considered misdemeanors.

Public Acts 311 and 312 raised the felony threshold level for various larceny and bad check offenses, and established a graduated penalty structure for those offenses. Under that system, misdemeanor penalties apply to violations involving less than \$200 and more severe misdemeanor penalties apply to violations involving \$200 or more but less than \$1,000; felony penalties apply to violations involving \$1,000 or more but less than \$20,000 and more severe felony penalties apply to

violations involving \$20,000 or more. The greater penalties also apply to violations involving lower values, when the offender has prior convictions.

Other violations of law, involving fraudulent acts or destruction of property and proscribed in statutes other than the Penal Code, continued to have the lower \$100 felony threshold that applied to most larceny offenses before 1998. It was suggested that those offenses should be subject to the same felony threshold and graduated penalty structure that has applied to larceny offenses since 1998.

CONTENT

Senate Bills 402, 404, 406, 408, and 410 amended various acts to increase the felony threshold and establish graduated sanctions for various offenses involving illegally obtained money or property. The bills also specify that violations in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of a violation for purposes of meeting the felony threshold and graduated penalty structure. Senate Bill 402 amended the crime victim's compensation law; Senate Bill 404

amended the Michigan Family Farm Development Act; Senate Bill 406 amended the Construction Lien Act; Senate Bill 408 amended the State Housing Development Authority Act; and Senate Bill 410 amended the Natural Resources and Environmental Protection Act (NREPA).

Senate Bills 403, 405, 407, 409, and 411 amended the Code of Criminal Procedure to make the sentencing guidelines consistent with the increased felony thresholds and penalties.

In addition, Senate Bills 402, 404, 406, 408, and 410 all specify that, if the prosecuting attorney intends to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor must include on the complaint and information a statement listing the prior conviction or convictions. The existence of a defendant's prior conviction or convictions must be determined by the court, without a jury, at sentencing, or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any relevant evidence, including one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

These bills also specify that, if a sentence for a conviction under the bills is enhanced by one or more convictions, those prior convictions may not be used to enhance the sentence further under the Code of Criminal Procedure's habitual offender provisions.

Senate Bills 410 and 411 also revised the NREPA's prohibition against moving or defacing human remains on the Great Lakes bottomlands, established felony penalties for that violation, and included the felony in the sentencing guidelines.

The bills took effect on January 1, 2002. Senate Bill 403 was tie-barred to Senate Bill 402; Senate Bill 405 was tie-barred to Senate Bill 404; Senate Bill 407 was tie-barred to Senate Bill 406; Senate Bill 409 was tie-barred to Senate Bill 408; and Senate Bill 411 was tie-barred to Senate Bill 410.

Senate Bill 402

The crime victim's compensation law prohibits the presentation of false information about a crime to the Crime Victim Services Commission, with intent to defraud or cheat, causing an award of money to be made to any person. Previously, if the award was less than \$100, the violation was a misdemeanor punishable by up to three months' imprisonment and/or a maximum fine of \$1,000. If the award was \$100 or more, the violation was a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$15,000.

Under the bill, a violation is a misdemeanor or a felony, as shown in Table 1, based upon the amount of the award and the offender's prior convictions for defrauding the Commission.

Table 1
Penalties under Senate Bills
402, 404, 406, 408, & 410

Amount Involved	Offense	Max. Fine	Max. Term
<\$200; first offense	Misd.	\$500 or 3x value ^{a)}	93 days
\$200 to <\$1,000; or <\$200 w/ 1 or more priors	Misd.	\$2,000 or 3x value ^{b)}	1 year
\$1,000 to <\$20,000; or \$200 to <\$1,000 w/ 1 or more priors ^{c)}	Felony	\$10,000 or 3x value ^{b)}	5 years
\$20,000 or more; or \$1,000 to <\$20,000 w/ 2 or more priors ^{c)}	Felony	\$15,000 or 3x value ^{b)}	10 years
^{a)} Under Senate Bill 402, the maximum fine is \$500; under the other bills, the maximum fine is \$500 or three times the value involved in the offense, whichever is greater. ^{b)} Under all five bills, the maximum fine is the amount shown or three times the value involved in the offense, whichever is greater. ^{c)} A prior conviction does not include an offense involving less than \$200.			

Senate Bill 403

Previously, under the sentencing guidelines, false presentation to the Crime Victim Services Commission to obtain more than \$100 was a Class E property felony, with a statutory maximum sentence of 10 years' imprisonment. Under the bill, false presentation to the Commission to obtain \$1,000 to \$20,000, or \$200 to under \$1,000 with prior convictions, is a Class E property felony, with a statutory maximum sentence of five years' imprisonment. False presentation to obtain \$20,000 or more, or \$1,000 to less than \$20,000 with prior convictions, is a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 404

The Michigan Family Farm Development Act prohibits obtaining any money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service provided under the Act, including participation in a program established under the Act, with the intent to defraud or cheat and by false pretenses, including a false statement or representation. Previously, if the violation involved \$100 or less in value, the offense was a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$100. If the violation involved more than \$100 in value, the offense was a felony punishable by 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, a violation is a misdemeanor or a felony based on the value of the proceeds and the offender's prior convictions under the Act, as shown in Table 1.

Senate Bill 405

Previously, under the sentencing guidelines, falsely obtaining money or agricultural land was a Class E felony against the public trust, with a statutory maximum sentence of 10 years' imprisonment. Under the bill, false pretenses under the Michigan Family Farm Development Act involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, is a Class E property felony, with a statutory maximum sentence of five years' imprisonment. False pretenses under that Act involving \$20,000 or more, or \$1,000 to less

than \$20,000 with prior convictions, is a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 406

The Construction Lien Act prohibits a contractor or subcontractor who desires to draw money from giving or causing to be given to any owner or lessee a false sworn statement, with intent to defraud. Previously, the violation was a misdemeanor if the statement involved was for \$100 or less and a felony if it was for more than \$100.

Under the bill, a violation is a misdemeanor or a felony, as shown in Table 1, based upon the amount of the statement and the offender's prior convictions under the Act.

Senate Bill 407

Previously, under the sentencing guidelines, a false sworn statement by a contractor was a Class F property felony, with a statutory maximum sentence of four years' imprisonment. Under the bill, a false sworn statement by a contractor involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, is a Class E property felony, with a statutory maximum sentence of five years' imprisonment. A false sworn statement by a contractor involving \$20,000 or more, or \$1,000 to less than \$20,000 with prior convictions, is a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 408

The State Housing Development Authority Act prohibits obtaining money, real or personal property, or the use of an instrument, facility, article, or other valuable thing or service including participation in programs initiated under the Act, with intent to defraud or cheat by false pretense. Previously, if the value of the land, money, property, or other valuable thing or service was \$100 or less, the violation was a misdemeanor. If the value was more than \$100, the violation was a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, a violation is a misdemeanor or a felony based upon the value involved and the offender's prior convictions under the Act, as shown in Table 1.

Senate Bill 409

Previously, under the sentencing guidelines, a violation of the State Housing Development Authority Act involving false pretenses over \$100 was a Class G property felony, with a statutory maximum sentence of 10 years' imprisonment. Under the bill, false pretenses under that Act involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, is a Class E property felony, with a statutory maximum sentence of five years' imprisonment. A violation involving more than \$20,000, or \$1,000 to less than \$20,000 with prior convictions, is a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

The bill also includes the sentencing guidelines revisions pertaining to false presentation to the Crime Victim Services Commission that were enacted in Senate Bill 403.

Senate Bill 410

The NREPA prohibits the unauthorized removal of forest products or property from State-owned land, and the unauthorized removal or transport of Christmas trees, boughs, and certain other plants. The previous penalties were based on the damages resulting from a violation and the offender's prior convictions for the particular offense, as shown in Table 2.

Table 2
Previous Penalties for Unauthorized
Removal of Property

Damages	Offense	Fine	Max. Term
\$100 or less; 1st offense	Civil	\$500 max	NA
\$100 or less; repeat offense	Misd.	\$50 min/ \$500 max	90 days
>\$100 but <\$1,000	Misd.	\$500 min/ \$5,000 max	180 days
\$1,000 or more	Felony	\$1,000 min/ \$10,000 max	180 days
Note: The sentence for a criminal offense also could have included the costs of prosecution.			

The NREPA also prohibits recovering, altering, or destroying abandoned property that is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes bottomlands preserve, except with a permit issued jointly by the Secretary of State and the Department of Natural Resources. Previously, a violation involving property with a fair market value of \$100 or more was a felony punishable by up to two years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, a violation of either of those offenses is a misdemeanor or a felony based upon the value involved and the offender's prior convictions, as shown in Table 1.

The NREPA prohibits removing, conveying, mutilating, or defacing a human body or the remains of a human body located on the bottomlands of the Great Lakes. Previously, the offense was a misdemeanor punishable by up to six months' imprisonment and/or a maximum fine of \$500. Under the bill, a violation is a felony punishable by up to 10 years' imprisonment, a maximum fine of \$5,000, or both. In addition, the bill specifies that the prohibition does not apply to removing or conveying a human body or human remains under any of the following circumstances:

- Pursuant to a court order.
- Pursuant to the written consent of the decedent's next of kin, if the death occurred less than 100 years before the body or remains were removed or conveyed.
- For law enforcement, medical, archaeological, or scientific purposes.

Senate Bill 411

Previously, under the sentencing guidelines, the following violations involving a value of \$1,000 or more were Class H felonies with a statutory maximum sentence of 180 days' imprisonment:

- Removing or damaging State-owned property.
- Illegally cutting, removing, or transporting a tree or other plant.

Also, recovering abandoned property in the Great Lakes without a permit was a Class G felony against the public trust, with a statutory

maximum sentence of two years' imprisonment.

Under the bill, any of those violations involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, is a Class E property felony, with a statutory maximum sentence of five years' imprisonment. A violation involving more than \$20,000, or \$1,000 to less than \$20,000 with prior convictions, is a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

The bill also added to the sentencing guidelines the crime of removing or mutilating a human body from the Great Lakes bottomlands. That offense is a Class D felony against the public order, with a statutory maximum of 10 years' imprisonment.

- MCL 18.366 (S.B. 402)
- 777.11 (S.B. 403)
- 285.279 (S.B. 404)
- 777.12 (S.B. 405)
- 570.1110 (S.B. 406)
- 777.15 (S.B. 407)
- 125.1447 (S.B. 408)
- 777.11 (S.B. 409)
- 324.2157 et al. (S.B. 410)
- 777.13 (S.B. 411)

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 bills updated and standardized criminal sanctions for various fraud and resource destruction violations, consistent with changes made for larceny offenses in 1998. By increasing the dollar amount of the misdemeanor/felony threshold and implementing a four-tier penalty structure that offers stiffer penalties for the most egregious offenses and allows strong misdemeanor penalties for some offenses that formerly could be prosecuted as felonies, the bills addressed the changes that occurred in the prosecution of those offenses due to normal inflationary increases over the years. Also, by making even the lesser misdemeanor offenses subject to a 93-day maximum sentence, the bills ensure that those offenders are fingerprinted and their criminal records maintained. The bills thus should enable law

enforcement personnel to identify repeat violators more easily.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 402 through 411 will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many offenders a year are convicted of the misdemeanors subject to the bills. To the extent that Senate Bills 402, 404, 406, 408, and 410 increase the misdemeanor ceiling from \$100 to \$1,000 by forming two misdemeanor offenses, more offenders might be convicted of a misdemeanor. An increase in the number of offenders convicted of a misdemeanor will reduce the number of offenders sentenced to State incarceration or supervision. However, costs of incarceration or supervision for local government will increase, especially as the penalty is increased in certain circumstances to a maximum of one year. The daily costs of incarceration vary among the counties from \$27 to \$65 per prisoner.

The fiscal impact of the bills' felony penalties is described below.

Senate Bills 402 and 403

According to the 1999 Department of Corrections' Statistical Report, there were no offenders convicted of the felony offense of falsely presenting facts and circumstances of a crime to cause an award of money from the Crime Victim Services Commission. To the extent that the felony dollar threshold is increased from \$100 to \$1,000, more offenders may be convicted a misdemeanor. Also, in certain circumstances the maximum penalty for the felony is reduced from 10 years' incarceration to five years. However, the cost of incarceration is determined by the length of minimum sentence, and the incorporation of these offenses in the sentencing guidelines increases the 10-year maximum felony from a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months, to a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months. The five-year felony is incorporated in the sentencing guidelines as a Class E felony.

Senate Bills 404 and 405

According to the 1999 Department of Corrections' Statistical Report, there were no offenders convicted of the felony violation of the Michigan Family Farm Development Act. To the extent that the felony dollar threshold is increased from \$100 to \$1,000, more offenders may be convicted of a misdemeanor. Also, in certain circumstances the maximum penalty for the felony is reduced from 10 years' incarceration to five years. However, the cost of incarceration is determined by the length of minimum sentence. The 10-year maximum felony is a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months and the five-year felony is incorporated in the sentencing guidelines as a Class G felony with a minimum sentencing guideline range from 0-3 months to 7-23 months.

To the extent that the crime is changed from public trust to property, one additional offense variable concerning the lethal potential of a weapon involved must be considered. Additional offense variable points tend to increase the length of minimum sentence.

Senate Bills 406 and 407

According to the 1999 Department of Corrections' Statistical Report, there were two offenders convicted of the felony of a sworn false statement by a contractor and the offender received a probation sentence. To the extent that the felony dollar threshold is increased from \$100 to \$1,000, more offenders may be convicted a misdemeanor. However, based on the circumstance of the crime, the maximum length of incarceration for this felony is increased from four years to five or 10 years. The 10-year maximum felony is a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months and the five-year felony is incorporated in the sentencing guidelines as a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months, while under previous law the four-year felony was a Class F with a minimum sentencing guideline range from 0-3 months to 17-30 months. The minimum sentence is determinate of the cost of incarceration. Assuming that two offenders a year are sentenced for the longest minimum sentence, then the cost of incarceration for this crime will increase by \$28,000 per year for the five-

year offense or \$168,000 for the 10-year offense.

Senate Bills 408 and 409

According to the 1999 Department of Corrections' Statistical Report, there were no offenders convicted of the felony violation of the State Housing Development Authority Act. To the extent that the felony dollar threshold is increased from \$100 to \$1,000, more offenders may be convicted a misdemeanor. Also, in certain circumstances the maximum penalty for the felony is reduced from 10 years' incarceration to five years. However, the cost of incarceration is determined by the length of minimum sentence. The 10-year maximum felony is decreased from a Class C felony with a minimum sentencing guideline range from 0-11 months to 62-114 months, to a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months, and the five-year felony is incorporated in the sentencing guidelines as a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months.

Senate Bills 410 and 411

According to the 1999 Department of Corrections' Statistical Report, there were no offenders convicted of the felony of damaging State property, illegally cutting, removing, or transporting trees or other plants, or recovering abandoned property in the Great Lakes. Based on the circumstance of the crime, the maximum penalty for these felonies is increased from 180 days to five or 10 years. The 10-year maximum felony is a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months, and the five-year felony is incorporated in the sentencing guidelines as a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months, while previously the 180-day felony was a Class H with a minimum sentencing guideline range from 0-1 month to 5-17 months.

To the extent that the crime is changed from public trust to property, one additional offense variable concerning the lethal potential of a weapon involved must be considered. Additional offense variable points tend to increase the length of minimum sentence.

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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.

Also, there are no data available to indicate how many people may be convicted of moving or defacing human remains on the Great Lakes bottomlands. This offense is incorporated in the sentencing guidelines as a Class D offense with a minimum sentence range from 0-6 months to 43-76 months. Assuming that two offenders a year are convicted of the new felony and receive the longest minimum sentence, given an average annual cost of incarceration of \$22,000, costs for the State will increase \$280,000.

Fiscal Analyst: Bethany Wicksall