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THEFT OF PLANTS, FOREST PRODUCTS

House Bills 4895 and 4896 as enrolled
Second Analysis (3-6-94)

Sponsor: Rep. Beverly Bodem
House Committee: Agriculture & Forestry
Senate Committee: Agriculture & Forestry

THE APPARENT PROBLEM:

Michigan has two laws governing the removal of plants and other forest products from land. Public Act 126 of 1939 governs state owned and tax delinquent land, while Public Act 182 of 1962 -- which reportedly originally was intended to protect private Christmas and ornamental tree growers -- governs private land. Reportedly, theft from state and private forest land has been increasing, perhaps partly due to the increased value of certain forest products, such as bird's-eye maple trees. Legislation has been introduced to increase the penalties for such theft.

THE CONTENT OF THE BILLS:

Generally speaking, the bills would increase the penalties for stealing or damaging plants, minerals, and buildings or other improvements on state and private land. The bills would share a graduated penalty structure, including allowing the collection of triple damages and the seizure of equipment used to violate the bill's provisions.

House Bill 4895 would repeal and rewrite Public Act 126 of 1939 (MCL 322.131 et al.), which prohibits the cutting, injury, or removal of forest products, buildings (or other improvements), or minerals from state-owned or tax-delinquent lands. The bill would name the new proposed act the "state owned lands protection act."

Prohibited actions. Basically, under existing law, it is illegal to trespass on state-owned land and take any plants or minerals or damage or remove any buildings or other improvements on that land. It is illegal, also, to have someone else trespass and take plants or damage property on state lands. Finally, it is illegal for anyone to knowingly buy or acquire anything illegally cut or taken from state lands.

Under the bill, people would be prohibited from (a) going on state land to cut or remove plants, minerals, or property (or having other people do so) without written permission from the Department of Natural Resources (DNR) or unless they were acting as authorized by the administrative rules regarding state lands (R 299.321 and R 299.331) and (b) accepting or receiving anything cut or removed from state land in violation of the bill.

Penalties. Currently, if someone unknowingly violates the existing act, the enforcing officer can adjust and collect the damages caused by the violation from the violator. When a court finds that the trespass was willful, the violator is liable to the state for three times the amount of the damages he or she caused, or the illegally taken material can be seized by the state (which also then takes title to the material). Willful trespass on state lands that a court finds involves damages of less than \$200 is a misdemeanor punishable by a fine of up to \$100, jail for up to 90 days, and the costs of prosecution. Willful trespass involving damages of more than \$200 is a felony punishable by a fine of at least \$100 (but not more than \$500) and imprisonment for up to two years. Seized property can be disposed of "to the best advantage of the state."

The bill would create three levels of penalties for violations: civil fines, misdemeanors, and felonies. A civil fine of up to \$500 could be imposed for a first violation involving damages of \$100 or less. Second and subsequent violations involving damages of \$100 or less, would be misdemeanors punishable by imprisonment for up to 90 days and a fine of \$50 to \$500 and the costs of prosecution. Violations involving damages of between \$100 and \$1,000 would be misdemeanors punishable by imprisonment for up to 180 days and a fine of \$500

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to \$5,000 and the costs of prosecution. Violations involving damages of \$10,000 or more would be felonies punishable by imprisonment for up to 180 days and fines of \$1,000 to \$10,000 and the costs of prosecution.

Seizure of equipment, triple damages, and civil contempt. In addition to the civil and criminal penalties, anyone convicted of violating the bill would be liable for a minimum of \$50, and up to three times the actual damages caused by the violation, plus court costs and attorney fees. Material (or other property) cut or removed would be seized by the state, which would take ownership of it. Equipment used in the violation also could be seized and disposed of "to the best advantage of the state" as determined by the DNR.

A court that convicted a violator would order forfeiture of up to three times the damages caused by the violation. If two or more people were convicted of a violation, the forfeiture would be declared against them jointly. If a violator failed to pay the amount specified by the court upon conviction, the court would either (a) impose a sentence and make it a condition of the sentence that the defendant pay the forfeited amount and set the time and manner of payment, or (b) make a written order allowing the defendant to pay the forfeited amount in installments as set by the court.

Someone who defaulted in payment of a forfeiture (or an installment on a forfeiture) could be found in civil contempt (and arrested), unless he or she could show that the default wasn't an intentional refusal to obey the court order or that he or she had made a good faith effort to get the money required for the payment.

If the court found the defendant not in civil contempt, it could allow the defendant additional time for payment, reduce the amount of the forfeiture (or the unpaid part of the forfeiture), or revoke part of all of the forfeiture (or the unpaid balance). Defaults in payment could be collected as allowed under the Revised Judicature Act.

Money received by the disposal of property seized under the bill, as well as forfeiture damages, would be deposited into the fund that had been used to buy the land on which the violation occurred.

Repealer. The bill would repeal Public Act 126 of 1939 (MCL 322.131 to 322.138).

House Bill 4896 would amend Public Act 182 of 1962 (MCL 320.411 et al.) to increase the penalties for taking certain trees and native plants from private land without a bill of sale (or other proof of ownership) from the land owner.

Enforcing the bill. The directors of the Department of Agriculture and the Department of Natural Resources, in cooperation with law enforcement agencies, would enforce the act. After consulting with the DNR, the director of the MDA would promulgate any rules necessary to enforce the act.

Prohibited actions. Currently, Public Act 182 of 1962 prohibits people from cutting or taking Christmas trees, evergreen boughs, and certain other plants (including certain specified native plants) from private land without a bill of sale from the land owner (in a form prescribed by the MDA). Law enforcement officers and authorized employees of the Departments of Natural Resources and Agriculture can, with probable cause, arrest people in possession of regulated plants in violation of the act. They also can seize and hold the plants. The act allows one exemption to its requirements: during December, people can sell or transport up to two Christmas trees without a bill of sale. Violations of the act are misdemeanors.

The bill would prohibit people from cutting, taking, or selling certain plants, that were grown on private property, without either a bill of sale or some other state- or federally-approved proof of ownership. Proof of ownership other than a bill of sale would have to be on a form prescribed by one of three agencies: the Department of Agriculture, the Department of Natural Resources, or the federal agency with jurisdiction over the regulated plant.

Transporting and selling plants. Anyone who transported a plant taken from their own property would have to carry with them an original or a copy of a current tax receipt or deed for the property in question. Owners wouldn't be prosecuted for violating the act if they produced the documentation after being stopped while moving a plant without it.

People who transported plants taken from someone else's property would have to carry with them a bill of sale (or other evidence of acquiring ownership on a prescribed form). Each plant being moved would have to be tagged by, and identify, the person who was moving it, his or her address, and from whom the plant had been acquired.

People couldn't sell plants without having the required evidence of ownership (whether a bill of sale, a tax receipt, a deed, etc.), and would have to give buyers a bill of sale or approved proof of ownership. Sellers would have to keep records of their sales for as long as the state or federal government required.

Law enforcement officers. When a law enforcement officer or authorized MDA or DNR employee had reasonable cause to believe that the act was being violated, he or she could do the following:

- * make inspections to decide whether or not the act was being violated;
- * stop any vehicle that was transporting any plant at any time;
- * inspect and make copies of bills of sale or other prescribed proof of ownership;
- * arrest people found to have plants in violation of the act; and
- * impound any plants and any equipment used to remove or transport them.

Upon demand by a law enforcement officer, people would be required to produce a bill of sale or other evidence of ownership of a plant they had cut, taken, or moved. Failure to show proof of ownership would be prima facie evidence that it didn't exist.

Disposal of impounded plants and equipment. Under court order, plants or equipment impounded under the bill would be permanently seized and disposed of as required under the fish and game enforcement act (Public Act 192 of 1929).

Penalties. As in House Bill 4895, the bill would create three levels of penalties: civil fines, misdemeanors, and felonies. A civil fine of up to \$500 could be imposed for a first violation involving damages of \$100 or less. Second and subsequent violations involving damages of \$100 or less would be misdemeanors, punishable by imprisonment for up to 90 days and a fine of \$50 to \$500 and the costs of prosecution. Violations involving damages between \$100 and \$1,000 would be misdemeanors punishable by imprisonment for up to 180 days and a fine of \$500 to \$5,000 and the costs of prosecution. Violations involving damages of \$1,000

or more would be felonies punishable by imprisonment for up to 180 days and fines of \$1,000 to \$10,000 and the costs of prosecution.

In addition, the forgery of a bill of sale or other proof of ownership would also be a misdemeanor punishable by imprisonment for up to 90 days and a fine of up to \$100.

Civil lawsuits. In addition to the civil and criminal penalties allowed under the bill, anyone illegally removing or cutting a plant in violation of the bill would be liable in a civil action (filed by the state or the property owner) for up to three times the fair market value of the damage caused by the violation (or \$100, whichever was greater), and for court costs and attorney fees. These damages would be paid to the owner of the land from which the plants were illegally removed, or, if the plants were removed from state lands, to the state treasurer, who would credit the deposit to the fund that was used to buy the land in question.

Repealer. The bill would repeal the current exemption that allows people to sell or transport up to two Christmas trees each December without a bill of sale.

Effective date. The bill would take effect immediately upon being enacted.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bills aren't anticipated to cost the state anything to implement, and could generate an undetermined increase in revenues through the fines they would allow. (12-14-93)

ARGUMENTS:

For:

The bills would put teeth into the laws intended to discourage the theft of forest plants and products. They would increase the penalties for stealing plants -- or such things as cut wood -- from both state and private land, thereby not only protecting the citizens of the state (including private landowners) from the theft of valuable resources, but also reducing unfair competition to legitimate businesspeople (whether loggers or Christmas tree growers). People -- such as illegal loggers and unscrupulous collectors -- do take advantage of unmarked private property and state lands.

Reportedly, with the increased popularity of certain kinds of wood (such as bird's-eye maple) or wood products (such as large cedar trees for log homes), the commercial theft of valuable trees has been on the rise, while valuable ornamentals are disappearing from private land. If the penalties for such theft were increased -- and if law enforcement officers were allowed to impound not only illegally taken plants but also the equipment used to take them -- some of these thefts could be deterred. Given the value of some forest products (reportedly, bird's-eye maples can be worth \$20,000 each at the mill), the provisions mandating the forfeiture of three times the damages -- where "damages" is defined as "fair market value at the mill" rather than "on the stump" -- would indeed appear to create substantial financial disincentives for such theft. At the same time, the bills also would protect owners from unnecessary prosecution (by allowing them to produce proof of land ownership after being stopped for possible violations) as well as making a first offense involving minor damages a civil, rather than criminal, offense.

Against:

The bills might wind up interfering with free movement within the state. They would let law enforcement officers -- including MDA and DNR employees -- go around stopping anyone they wanted. And then if people didn't happen to have the appropriate paperwork with them, they'd automatically be guilty of a criminal offense (a misdemeanor), which will be with them the rest of their lives. House Bill 4896 would allow some leniency for land owners transporting plants from their land without having the proper paperwork with them. But what about the neighbor, told to go ahead and cut a Christmas tree from a friend's land, who gets stopped and doesn't have a bill of sale or the proper government form? How many people are going to get prescribed government forms in order to allow their neighbors to take a Christmas tree from their land? At least in the existing act (Public Act 126 of 1939), people carrying only one or two Christmas trees between November 30 and December 31 of the same year are allowed to do so without having to fear being stopped and arrested because they might not have the requisite paperwork. The bills should keep some leeway for such informal situations.

Response:

The law already lets law enforcement officials -- including employees of the MDA and the DNR -- stop and inspect cars and pickup trucks, as well as

larger loaded vehicles. Reportedly, however, law enforcement officials normally don't bother stopping cars or even pickup trucks. Partly this is because there just aren't enough resources to do so; but the fact is that even pickup trucks can hold only a single cord of wood (for example), which isn't likely to be evidence of extensive illegal logging. A pickup truck loaded with wood might, however, be a case of minor logging of particularly valuable trees, so it would be important to continue to allow law officers to exercise their best judgment and discretion in such cases.