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ILLEGALLY TAKEN FOREST PLANTS

House Bills 4895 and 4896
Sponsor: Rep Beverly Bodem
Committee: Agriculture and Forestry

Complete to 9-28-93

A SUMMARY OF HOUSE BILLS 4895 AND 4896 AS INTRODUCED 6-29-93

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 governs private land. The bills would amend these two acts to increase the penalties for violations, direct certain funds to the Game and Fish Protection Fund, and substitute certain references to the Department of Agriculture with references to the Department of Natural Resources and the federal Forest Service.

Public Act 126 of 1939 prohibits the cutting, injury, or removal of forest products, buildings (or other improvements), or minerals from state-owned lands or tax delinquent lands. Law enforcement officers who apprehend "casual and involuntary" violations of the act can adjust and collect from the violators the amount of damages caused by the trespass. "Wilful" violators who cause damages of up to \$200 are guilty of a misdemeanor punishable by a fine of up to \$100 and imprisonment for up to 90 days. Violators causing damages over \$100 are guilty of a felony punishable by a fine of at least \$100 but not more than \$500 and imprisonment for up to two years. Michigan State Police officers, the director of the Department of Natural Resources, and any special assistants or conservation officers appointed by the director may arrest (without a warrant) anyone observed violating the act and may seize any forest products (and any other property) that were unlawfully cut or removed. Seized property can be disposed of "to the best advantage of the state."

House Bill 4895 would amend Public Act 126 of 1939 (MCL 322.132 et al.) to:

- * decrease the maximum misdemeanor damages amount from \$200 to \$100;
- * define "willful" to mean, in addition to its commonly understood meaning, "the failure of a person to exercise ordinary care in determining whether the land that he or she enters in violation" of the act is in fact state-owned or tax delinquent land (Note: Section 3 of the act contains a definition of the word "wilful." In addition to its ordinary meaning, the word means "the failure on the part of any person to exercise ordinary care in determining the true boundaries of the state land which he has entered upon contrary to the provisions" of the act);
- * set the felony damages amount at \$100 instead of \$200 and increase the fine to a minimum of \$200 (instead of \$100) and a maximum of \$1,000 (instead of \$500);
- * require that funds collected for "casual and involuntary" violations of the act be credited to the Forest Management Fund;

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* make those who illegally remove or cut a forest product liable to the state for five times the fair market value of the damages caused by the removal or cutting, and credit the damages collected to the Game and Fish Protection Fund created in the Hunting and Fishing License Act (Public Act 86 of 1980);

* allow all law enforcement officers (not just State Police officers) to make warrantless arrests under the act, and allow arresting personnel to seize not only forest products or other property unlawfully cut or removed but also all equipment used in the unlawful cutting, taking, or transporting of these products or property; and

* require that property seized under the act be disposed of as required under Public Act 192 of 1929 (which provides for the enforcement of laws for the protection of wild birds, wild animals, and fish).

Public Act 182 of 1962 prohibits the cutting, removal, or transport -- without a bill of sale from the owner and on a form prescribed by the Department of Agriculture -- Christmas trees, evergreen boughs, or other trees, shrubs, or vines or certain native plants (trailing arbutus, bird's foot violet, climbing bittersweet, club mosses, flowering dogwood, all Michigan holly, North American lotus, pipsissewa, and all native orchids, trilliums and gentians). Law enforcement officers -- including authorized employees of the Department of Natural Resources and the Department of Agriculture -- who have probable cause to believe that someone is violating the act can do a number of things, including arresting anyone in possession of a plant in violation of the act and seizing and holding any such trees, boughs, shrubs, vines or plants. Anyone who violates the act is guilty of a misdemeanor. The act does not apply to people who sell or transport not more than two Christmas trees between November 30 and December 31 of the same year.

House Bill 4896 would amend Public Act 182 of 1962 (MCL 320.411 et al.) to:

* replace references to the Department of Agriculture with references to "the Department of Natural Resources or the United States Forest Service";

* include the scientific names of the plants listed in the act and to add "a part of a tree" to the list of trees, vines and plants that may not be cut, removed, or transported without a bill of sale;

* allow law enforcement officers to seize, in addition to illegally taken plants, equipment used to remove or transport the plants and require that seized plants or equipment be disposed of as required under Public Act 192 of 1929;

* make those who remove or cut a plant in violation of the act liable for three times the fair market value of the damage caused by the removal or cutting and credit the damages collected to the Game and Fish Protection Fund created in the Hunting and Fishing License Act (Public Act 86 of 1980); and

* repeal the exemption currently granted to people transporting only one or two Christmas trees between November 30 and December 31 of the same year.