

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 767 (Substitute S-6 as passed by the Senate)
Senate Bill 768 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Mat J. Dunaskiss (S.B. 767)
Senator Loren Bennett (S.B. 768)
Committee: Natural Resources and Environmental Affairs

Date Completed: 6-17-98

RATIONALE

Part 731 of the Natural Resources and Environmental Protection Act (NREPA) is designed to limit the liability of land owners to persons coming onto their property for recreational purposes, and to prevent recreational trespass by specifying imprisonment and/or a fine for a violation, establishing a penalty for a subsequent violation, and permitting the forfeiture of violators' property. Some people, however, believe that the current provisions are ineffective in curbing recreational trespass since, reportedly, some hunters continue to encroach on private property in pursuit of their recreational activities and show no regard for private property of others despite the current recreational trespass provisions. Evidently, many property owners have attempted to press criminal charges against the violators but found the process to be tedious and complicated. Therefore, it has been suggested that the NREPA should be amended to allow recreational trespass actions to be remedied under criminal *and* civil law, provide increased penalties for violations, and maintain information on licensed hunters so that property owners could protect their property and seek reasonable damages from trespassers.

CONTENT

Senate Bill 767 (S-6) would amend Part 731 (Recreational Trespass) and Part 435 (Hunting and Fishing Licenses) of the NREPA to allow property owners to sue trespassers; increase penalties; revise seizure and forfeiture provisions; require a licensed hunter to wear a tag displaying a unique number assigned by the Department of Natural Resources (DNR); and require the DNR to maintain a computerized file of information in hunting license applications and tag numbers. The information in the file, except a person's name,

address, and year of birth, would be exempt from disclosure under the Freedom of Information Act. Senate Bill 768 (S-3) would amend the Revised Judicature Act to allow recreational trespass actions by property owners or lessees to be brought in the small claims court, and to require the State Court Administrator to prepare instruction sheets for these actions.

The bills are tie-barred to each other. The following is a detailed description of the bills.

Senate Bill 767 (S-6)

The NREPA provides that a person must not enter or remain upon property of another person, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping without the owner's or lessee's consent except under certain circumstances. Under the bill, the owner or lessee could bring a cause of action against a violator for \$250 or actual damages, whichever was greater, and actual and reasonable attorney fees.

Currently, a person who violates Part 731 is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$100. Under the bill, the fine would be at least \$100 but not more than \$500. The Act provides that a second or subsequent violation within three years of a previous violation is punishable by imprisonment for up to 90 days or a fine of at least \$100 but not more than \$500, or both, and the court may revoke the person's hunting or fishing license for the rest of the year, and order the person not to seek another license for up to three years. Under the bill, until September 31, 2001, a repeat offender within three years would be subject to imprisonment for

up to 90 days and/or a fine of at least \$250 but not more than \$1,000, and the court would have to revoke the offender's hunting, fishing, or trapping license and order the person not to seek a license of any kind for the remainder of the calendar year and during at least one succeeding year. After September 30, 2001, the penalty for a repeat offense would revert to the current level.

Currently, the court must order a violator to make restitution for any damages arising out of the violation. The bill would include reimbursement to the State for the value of any protected animal, furbearing animal, game, or fish that was taken while the violation was being committed. Currently, property that is brought onto the property of another during a repeat offense may be seized and forfeited. The bill would exempt electronic hunting-dog-retrieval equipment and certain living or dead animals, from seizure and forfeiture.

Senate Bill 768 (S-3)

Under the Revised Judicature Act, actions of fraud, libel, slander, assault, battery, or other intentional torts may not be instituted in the small claims division. The bill would allow an exception for an action under Section 73109 of the Natural Resources and Environmental Protection Act (which, under Senate Bill 767 (S-6), would allow a property owner or lessee to bring an action for a recreational trespass violation).

Currently, the State Court Administrator must prepare instruction sheets clearly explaining the small claims division's functions and procedures. A copy of the instruction sheet must be given to the claimant and also must be made available at the office of each clerk and deputy clerk of the district court. The clerk must send a copy of the defendant's instruction sheet and the served affidavit copy to the defendant. Under the bill, the State court Administrator also would have to prepare instruction sheets specifically for an action under Section 73109 of the NREPA.

MCL 324.43516 et al. (S.B. 767)
600.4701 et al. (S.B. 768)

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

Trespass by people pursuing outdoor recreation has been a problem in the State for some time. Reportedly, trespassers have used intimidation to gain access to land for hunting and other recreational uses. In some cases, property owners have reported harassment and property destruction by persons who have been denied access to the property. Other incidents evidently have occurred when property was sold and the new owner refused to permit other persons on the land. Sportspeople who, with the permission of the previous owner, had hunted the land for a number of years have threatened to continue hunting despite the new owner's restrictions. The current penalties--potential imprisonment and fines, revocation of a violator's recreational license, seizure or forfeiture of property brought by a trespasser, and restitution--have not adequately deterred hunters and others from trespassing on private property in pursuit of their recreational activities. Many property owners who have experienced these types of situations contend that they have little recourse under the criminal procedure, especially since few county prosecuting attorneys apparently are willing to take a trespass case to court. The bills would strengthen the NREPA by allowing property owners to sue trespassers in small claims court to seek reasonable damages, increasing the penalties for violations, requiring a licensed hunter to wear an identification tag, requiring a file of hunting license applications and tag numbers, and requiring violators to reimburse the State for the value of any animal, game, or fish that was taken by a violator. These provisions would send a message that an act of trespass was to be taken seriously and would result in significant penalties and civil liabilities.

Supporting Argument

Most licensed hunters are careful not to trespass on private property in pursuit of their recreational activities. The bill would help identify those trespassers who create a negative image for outdoor recreation by requiring every licensed hunter to wear a tag with a unique identification number displayed on his or her outermost garment to help identify who was caught trespassing.

Response: This provision would be ineffective since most hunters reportedly do not possess a back tag.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 767 (S-6)

The bill would have an indeterminate fiscal impact on State government, depending upon the number of violations and amount of fine revenue received. The bill would have no fiscal impact on local government.

Senate Bill 768 (S-3)

The bill would have a minimal fiscal impact on the State Court Administrative Office regarding preparation of instruction sheets for actions under Section 73109 of the Natural Resources and Environmental Protection Act.

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.