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SFA

BILL ANALYSIS

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Senate Bill 767 (Substitute S-2)
Senate Bill 768 (as introduced 10-22-97)
Sponsor: Senator Mat J. Dunaskiss (S.B. 767)
 Senator Loren Bennett (S.B. 768)
Committee: Hunting, Fishing and Forestry

Date Completed: 4-15-98

CONTENT

Senate Bill 767 (S-2) would amend Part 731 (Recreational Trespass) of the Natural Resources and Environmental Protection Act (NREPA) to allow a property owner or lessee to bring an action for a violation of Part 731; increase the criminal fines for violations; provide that, until September 30, 2001, a repeat offender's license would have to be revoked for the rest of the year and at least one year; provide for reimbursement to the State for damages arising out of a violation; and provide that, in a case involving entry on property to retrieve a hunting dog, the plaintiff or prosecutor would have the burden of showing that the property owner or lessee had previously prohibited entry. **Senate Bill 768** 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-2)

The Act currently provides that, on fenced or posted property or farm property, a fisherman wading or floating a navigable public stream may enter upon property, without written or oral consent, within the clearly defined banks of the stream or walk a route as closely proximate to the clearly defined bank as possible when necessary to avoid a natural or artificial hazard or obstruction, including but not limited to, a dam, deep hole, or a fence. The bill specifies that a fisherman wading or floating a navigable public stream could walk a route "without damaging farm products" on personal property without written or oral consent.

Under current law, a person other than a person possessing a firearm may, unless previously prohibited by the property owner or his or her lessee or agent, enter on foot upon the property of another person for the sole purpose of retrieving a hunting dog, and must not remain on the property beyond the reasonable time necessary to retrieve the dog. ("Hunting dog" means a dog allowed to range freely to engage in or aid in hunting on the day the dog enters the property of another person.) The bill provides that in an action under Section 73109 or 73110, the burden of showing that the property owner or his or her lessee or agent previously prohibited entry upon the property would be on the plaintiff or prosecuting attorney, respectively. (Section 73109, as amended by the bill, would allow a property owner to bring an action against someone who violated Part 731. Section 73110 sets forth criminal penalties for violations of Part 731.)

Currently, the Act 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 on that property without the owner's or lessee's consent except under certain circumstances. Under the bill, the owner or lessee of the property on which a violation was committed, could bring a cause of action against a person who violated Part 731 for \$250 or actual damages, whichever was greater.

Under the bill, a person who violated Part 731 would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a fine of at least \$100 but not more than \$500, or both. Currently, the Act sets a fine of up to \$100. A second or subsequent violation within three years of a previous violation currently is punishable by imprisonment for up to 90 days and/or a fine of at least \$100 but not more than \$1,000. The court also may order the person's hunting or fishing license revoked for the remainder of the calendar year, and may order the person not to seek or possess a license for up to three years. Under the bill, until September 30, 2001, a second or subsequent violation within three years would be punishable by imprisonment for up to 90 days or a fine of at least \$250 but not more than \$1,000, or both. In addition, the bill would require that a court revoke a repeat 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 in which the person was convicted and during at least one succeeding year. Beginning October 1, 2001, a person convicted of a second or subsequent violation within three years of a previous violation would be subject to the current penalty, although license revocation would not be limited to the remainder of the calendar year. ("License" would mean a hunting, fishing, and/or fur harvester's license.) The bill also would delete separate mandatory license revocation provisions for repeat offenses on a private shooting preserve.

The bill would allow the seizure and forfeiture of property other than fish, animals, hunting dogs, or electric hunting-dog-retrieval equipment that was brought onto another person's property while a violation was being committed, and any animal or fish taken from the property while the violation was being committed, as provided in the Revised Judicature Act. Currently, the Act allows the seizure and forfeiture of property brought to the property of another.

Currently, the court must order a person convicted of a violation to make restitution for any damages arising out of the violation. The bill would include reimbursement to the State for the value of any animal or fish that was taken while the violation was being committed as provided under the Act in Section 40119 (which pertains to reimbursement value of game or protected animals) or Section 48740 (which pertains to forfeiture of fish). "Animal" would mean fur-bearing animals, or game or a protected animal as defined in Section 43503 or 40103, respectively, but would not include a hunting dog, and "fish" would mean game or nongame fish as defined in Section 48701.

Senate Bill 768

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. A copy of the defendant's instruction sheet and the served affidavit copy must be sent to the defendant by the clerk. The bill provides that, in addition to general instruction sheets, the State Court Administrator would have to prepare instruction sheets specifically for actions under Section 73109 of the NREPA (which, under Senate Bill 767 (S-2), would allow a property owner or lessee to bring an action for a recreational trespass violation).

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 NREPA.

MCL 324.73101 et al. (S.B. 767)
600.4701 et al. (S.B. 768)

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 767 (S-2)

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

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.