



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

BILL ANALYSIS



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

Senate Bill 46 (Substitute S-2 as reported)
Senate Bills 47 and 568 (as reported without amendment)
Sponsor: Senator Bruce Patterson
Committee: Natural Resources and Environmental Affairs

Date Completed: 6-26-03

RATIONALE

Over a four-day period in April 2002, an estimated 70,000 gallons of industrial-grade, used oil were discharged into the Rouge River following heavy rains. The oil then was carried to the Detroit River and ultimately to Lake Erie, affecting up to 27 miles of shorelines and marsh areas. The Rouge River was closed to commercial shipping and recreational boating for 10 days, and wildlife and vegetation were damaged. It was the largest spill in the Great Lakes in 12 years, and the cost of the cleanup was over \$3.7 million. The Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Michigan Department of Environmental Quality, and other agencies sought to find the source of the spill and the parties responsible for it. While they narrowed the source to a storm sewer in Dearborn, to date, the individual or business responsible for the spill has not been found.

Under Section 3115 of Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act, a person who discharges a substance into the State's waters contrary to a permit is subject to a minimum civil fine of \$2,500, with a maximum of \$25,000 per day of violation. A person who knew or should have known that he or she discharged a substance contrary to Part 31 is guilty of a felony, subject to the same fine, plus an additional fine of up to \$25,000 for each day an unlawful discharge occurred, as well as a maximum prison sentence of two years. Criminal defendants who pose a substantial endangerment to the public health, safety, or welfare are subject to a sentence of five years' imprisonment, in addition to higher fines. In light of the events in April 2002, and as a result of other reported illegal discharges into storm sewers, rivers,

and streams, some believe that these penalties should be increased.

CONTENT

Senate Bill 46 (S-2) would amend the Natural Resources and Environmental Protection Act (NREPA) to increase the civil and criminal fines and the maximum term of imprisonment for people violating Part 31 of the Act. Senate Bill 47 would amend the Code of Criminal Procedure to revise the statutory maximum prison terms in the sentencing guidelines to reflect those proposed by Senate Bill 46. Senate Bill 568 would amend the NREPA to permit the Department of Environmental Quality (DEQ) to pay an award of up to \$10,000 to a person who provided information that contributed to the assessment of a civil fine or the arrest and conviction of a person under Part 31.

Senate Bill 46 (S-2) is tie-barred to Senate Bill 568, and Senate Bill 47 is tie-barred to Senate Bill 46. A more detailed explanation of Senate Bills 46 (S-2) and 568 follows.

Senate Bill 46 (S-2)

The bill would raise the minimum civil and criminal fine for a violation of Part 31 from \$2,500 to \$2,750, and the maximum fine from \$25,000 to \$27,500, for each day the violation occurred or continued. If a court found that a civil defendant caused or contributed to a catastrophic discharge, the court would have to impose a civil fine of at least \$50,000 for each day the violation occurred or continued, in addition to the standard civil fine. ("Catastrophic discharge" would refer to any spilling, releasing, escaping, etc. of a

substance to the waters of the State that caused or could cause a serious impairment to natural resources or to the public health, safety, or welfare.)

The bill would raise the minimum prison term from two to four years. For a criminal defendant who posed a substantial endangerment to the public health, safety, or welfare, the mandatory term would be increased from five to 10 years. (The bill would retain the \$500,000 minimum and \$5 million maximum civil fine for a civil defendant who posed a substantial endangerment.)

The bill specifies that fines recovered in a civil action would have to be credited to the General Fund (as they currently are), although up to \$10,000 of civil fines collected could be made available annually for the payment of awards to people who provided information, as proposed by Senate Bill 568.

(Under the Act, the criminal penalties apply if the person at the time of the violation knew or should have known that he or she unlawfully discharged a substance; intentionally makes a false statement in a permit application or a notice or report required by a permit; or intentionally renders a monitoring device or record inaccurate. To find a defendant civilly or criminally liable for substantial endangerment, the court must determine that the defendant knowingly or recklessly acted in such a manner as to cause death or serious bodily injury and that either the defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury, or the defendant acted in gross disregard of the standard of care that any reasonable person should observe in similar circumstances.)

Senate Bill 568

The bill would permit the DEQ to offer and pay an award of up to \$10,000 to a person who provided information that materially contributed to the assessment of a civil fine as the result of an action brought by the Attorney General, or the arrest and conviction of a person, under Part 31 of the Act.

The following people would not be eligible for payment of the award:

- An officer or employee of the United States.
- An officer of the State.
- A full- or part-time employee of the DEQ, the Department of Attorney General, or the Department of Natural Resources.
- A person who furnished the information in the performance of an official duty.
- A person wholly or partly responsible for the violation resulting in the civil fine or conviction.

An award could not be made until the DEQ promulgated rules prescribing the criteria for making awards.

MCL 324.3114 (S.B. 46)

MCL 777.13c (S.B. 47)

Proposed MCL 324.3115b (S.B. 568)

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 higher civil and criminal fines and longer prison terms proposed by Senate Bill 46 (S-2) could deter individuals as well as businesses from polluting Michigan's waters. According to the DEQ, there is confusion about existing language in the Act that imposes a minimum civil penalty of \$2,500, and then states that the maximum fine may not exceed \$25,000 per day of violation; evidently, some people believe that this can be interpreted as a maximum *total* fine. The bill clearly specifies that the fine would be not less than \$2,750 or more than \$27,500 *per violation for each day the violation occurred or continued*. Removing the current ambiguity would strengthen the DEQ's ability to enforce the Act through meaningful fines.

In addition, the new minimum \$50,000 per-day fine for a catastrophic discharge could prevent the type of spill that happened in the Rouge River. While the standard maximum fine might deter individuals and small businesses, it would not necessarily outweigh the economic benefit to a large corporation of violating the Act. The new fine for catastrophic discharges also would provide an appropriate penalty for spills that do not meet the Act's "substantial endangerment" requirements, but merit more than a \$25,000 (or \$27,500) per-day maximum fine. In some

cases, a discharge might be catastrophic but occur in only one day, which means that the penalty under current law might not be adequate. Also, since at least \$50,000 would have to be levied for each day a catastrophic discharge occurred or continued, civil defendants who discharged pollutants could rightly end up paying the entire cost of cleaning up a spill. Moreover, in order to impose this fine, the court would have to find serious impairment to the environment or the public health, safety, or welfare. This would make it easier show catastrophic discharge than it is to prove substantial endangerment, which requires the court to determine that the defendant acted knowingly or recklessly.

Supporting Argument

By allowing the DEQ to pay an award for information about Part 31 violations, Senate Bill 568 could result in more effective investigations, civil actions, and criminal prosecutions. The situation involving the Rouge River discharge demonstrates why an award could be helpful. Despite an intensive and lengthy investigation, no perpetrator yet has been identified. The possibility of an award could motivate people to come forward with information that leading to a civil judgment and/or criminal sentence.

Opposing Argument

The DEQ asserts that the existing statutory penalties have not hindered its efforts to enforce Part 31; additionally, the current maximum prison sentences are consistent with those for other environmental violations. For example, a person found guilty of a hazardous waste violation who "knowingly...places another person in imminent danger of death or serious bodily injury" and "manifests an unjustified and inexcusable disregard for human life" is eligible to receive a maximum two-year prison sentence under Section 11151(3) of the Act. The current maximum penalty for a violation of Part 31, with no endangerment, is two years. Increasing it to four years under Senate Bill 46 (S-2) would likely result in the courts' refusing to mete out such a harsh punishment, especially if a violation involved a false statement on a document, rather than an actual discharge.

Response: Petroleum spills can negatively affect wildlife and aquatic habitat for decades. Long after the oil slicks have disappeared, toxins from the petroleum remain in sediment, in plants, and in the tissues of animals,

impairing their reproduction. The discharge of waste containing PCBs, dioxins, and mercury into storm sewers or rivers also presents a significant danger to the environment and residents. The proposed increases in prison terms for criminal polluters are fair, given the long-term negative consequences of contaminating a natural resource the State is entrusted to protect. Furthermore, prison sentences are, and would remain, discretionary with the court.

Opposing Argument

Senate Bill 568, though well-meaning, could result in the needless harassment of small businesses and farmers by offering a "bounty" from the State to anyone who tipped off officials about a water discharge violation. It seems that the majority of complaints would come not from average working citizens, but from environmental extremists and college students working on class projects. Businesses would have to spend time and money to prove that their activities were permitted and legal. This, then, could force State regulators to respond to every complaint. It should not be a function of State government to offer a bounty that would burden its agencies and its citizens.

Legislative Analyst: Claire Layman

FISCAL IMPACT

Senate Bills 46 (S-2) and 47

Senate Bill 46 (S-2) would increase the range of fines assessed for violations of Part 31 of NREPA. This would increase fine revenue by an indeterminate amount since the number of violations and the fines assessed by the courts may vary widely. In FY 2001-02, a total of \$165,000 in fines was collected from three violations.

Senate Bills 46 (S-2) and 47 would have an indeterminate fiscal impact on State and local government by doubling the maximum prison terms for violations of Part 31. According to the Department of Corrections 2000 Statistical Report, no offenders were convicted of or serving time for either of the waste discharge offenses. If one uses the past as an indicator of the future, the bills would have no fiscal impact on the corrections system.

Under the bills, an offender would potentially receive a minimum sentence of up to 32 months rather than 16 months for the Class H offense (waste discharge violation without substantial endangerment) and a minimum sentence of up to 80 months rather than 40 months for the Class G offense (violation with substantial endangerment). Given that the average annual cost of incarceration is approximately \$25,000, for each offender convicted of the Class H offense and sentenced to prison for the longest allowable minimum sentence, it would cost the State \$66,600 rather than \$33,300. For each offender convicted of the Class G offense and sentenced to prison for the longest allowable minimum sentence, it would cost the State \$166,600 rather than \$83,300. Any additional penal fine revenue collected from increased fines would benefit public libraries.

Senate Bill 568

The bill could increase fine revenue collected by the State by an indeterminate amount. The payment of awards would partially offset the increased fine revenue received from violators.

Fiscal Analyst: Jessica Runnels
Bethany Wicksall

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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.