

Legislative Analysis



REVISE PENALTIES FOR UNLAWFUL DUMPING

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House Bill 4084 as introduced
Sponsor: Rep. Cynthia A. Johnson
Committee: Judiciary
Complete to 10-18-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4084 would amend the Natural Resources and Environmental Protection Act (NREPA) to revise the penalties for dumping litter as follows:

- Adopt misdemeanor penalties (penal fine only) for litter of three cubic feet or more.
- Allow enhanced penal fines for repeat violations.
- Subject an employer, as well as an employee who dumped litter, to penalties under certain circumstances.
- As part of a sentence, order the offender to remove the litter and remediate any damage.
- Allow a civil fine to be imposed instead of, or in addition to, a civil or misdemeanor fine if the state or a local government brings an action to cover costs of cleanup and remediate property damage.

Under section 8905a of NREPA, dumping litter on private or public land is illegal and punishable by a civil fine based on the amount and type of litter that was dumped. The section distinguishes between dumping litter comprising rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances and litter comprising abandoned vehicles, vessels, ORVs, and snowmobiles. The bill would revise provisions and penalties for general litter but would retain current penalties pertaining to abandoned vehicles, vessels, ORVs, and snowmobiles.

The bill would revise the amounts of litter that trigger sanctions, and the penalties for dumping the litter, as follows:¹

- Less than one cubic foot in volume: Currently a state civil infraction with a civil fine of up to \$800. The bill would retain current law.
- At least one cubic foot but less than three cubic feet in volume: Currently a state civil infraction with a civil fine of up to \$1,500. The bill would retain current law.
- Three cubic feet or more in volume: Currently a state civil infraction with a civil fine of up to \$2,500 (or up to \$5,000 for a subsequent violation). The bill would eliminate this sanction and replace it with the following:
 - At least three cubic feet but less than five cubic yards in volume: Misdemeanor punishable by a penal fine of up to \$2,500 for a first violation, increased by \$2,500 for each subsequent violation. (For example, up to \$5,000 for a second violation, up to \$7,500 for a third, etc.)
 - Five cubic yards or more in volume: Misdemeanor punishable by a penal fine of up to \$5,000, increased by \$5,000 for each subsequent violation. (For example, up to \$10,000 for a second violation, up to \$15,000 for a third, etc.)

¹ For purposes of illustration, a cubic foot is a cube whose sides are all 12 inches long. An average kitchen stove is about five to six cubic feet. A cubic yard is about the size of a side-by-side refrigerator/freezer. An average commercial dump truck can hold about 10 to 14 cubic yards of dirt.

Provisions concerning three cubic feet or more of litter

For violations pertaining to dumping three cubic feet or more of litter, the prohibitions and criminal penalties would apply both to a person and to his or her employer or employing agency if the violation was committed at the direction of, or with the knowledge of, the employer or employing agency. Upon conviction, the court would have to order a person to remove the litter and remediate any damage caused to the property as a result of the violation.

When seeking an enhanced penalty for a second or subsequent violation of dumping three cubic feet or more of litter, a prosecuting attorney would have to include on the complaint and information a statement listing the prior conviction or convictions. Existence of a prior conviction would be determined by the court, without a jury, at sentencing or at a separate hearing for this purpose before sentencing, and established by any relevant evidence, such as one or more of the following:

- A copy of the judgment or conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

Additional sanctions for dumping any amount of litter:

Either in addition to, or in lieu of, a state civil infraction or criminal conviction for a violation of dumping litter, an individual could be liable for a civil fine in an action brought by a city or township attorney, county prosecutor, or the attorney general seeking to cover the costs to clean up litter and remediate property damage. The civil fine ordered under this provision could not exceed the actual cleanup and remediation costs. Further, this civil fine revenue would have to be directed to a local community group or municipal, county, or state department that has or will perform the required cleanup and remediation.

The bill would take effect 90 days after its enactment.

MCL 324.8905a

BACKGROUND:

House Bill 4084 is identical to House Bill 4454 of the 2019-20 legislative session as that bill was passed by the House of Representatives and reported from the Senate Committee on Environmental Quality.

1995 PA 111 amended NREPA to allow violators to be punished with civil fines either as an alternative to or in addition to criminal penalties for dumping litter. Those provisions expired at the end of 1997, but 1998 PA 15 reenacted them. However, 1998 PA 15 removed the misdemeanor penalty in NREPA for littering. According to a Senate Fiscal Agency analysis of 1998 PA 15, the criminal penalties were deleted to remove any confusion among courts and law enforcement officials regarding whether a violator would be charged with a civil infraction or criminal offense.²

² 1998 PA 15: <http://legislature.mi.gov/doc.aspx?1997-HB-4382>

FISCAL IMPACT:

House Bill 4084 would have an indeterminate fiscal impact on local units of government and could have an impact on the state. The number of convictions that would result under provisions of the bill is not known. Under the bill, first, second, or subsequent offenses of littering, over 3 cubic feet, would be misdemeanors, resulting in sanctions of penal fines, and, in addition to that, or in lieu of that, could result in sanctions of civil fines. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, under the bill, civil fine revenue would be directed to the local community group or municipal, county, or state department that performs clean-up and remediation. Civil fine revenue could not exceed actual clean-up and remediation costs under the bill. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.