

Legislative Analysis



AMEND PENALTIES FOR LITTERING

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<http://www.house.mi.gov/hfa>

House Bill 4325 (H-1) as passed by the House
Sponsor: Rep. Helena Scott
Committee: Natural Resources, Environment, Tourism
and Outdoor Recreation
Complete to 1-22-24

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

SUMMARY:

House Bill 4325 would amend section 8905a of the Natural Resources and Environmental Protection Act (NREPA) to add additional categories of littering that constitute a violation of Part 89 of NREPA and to set penalties for each new category.

For purposes of the bill, *litter* means rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances. (The act also defines certain abandoned vehicles, ORVs, vessels, and snowmobiles as litter, but the penalty for these types of litter would not be affected by the bill.)

Presently under the law, there are three levels of littering, which are civil infractions with corresponding civil fines:

- If the amount of litter is less than one cubic foot, the fine is up to \$800.
- If the litter is more than one cubic foot but less than three cubic feet, a fine of up to \$1,500.
- If the litter is greater than three cubic feet, the fine is up to \$2,500 for a first offense, with additional offenses carrying a fine of up to \$5,000.

The bill would retain the first two levels, while replacing the three-cubic-feet-or-greater category with the following additional levels of littering and fines:

- Littering in an amount greater than three cubic feet but less than 135 cubic feet (expressed as five cubic yards in the bill) would be a misdemeanor punishable by a penal fine of up to \$2,500, with any subsequent violations increasing the maximum fine by \$2,500 each additional time.
- Littering in an amount of 135 cubic feet or more would be a misdemeanor punishable by a penal fine of up to \$5,000 for an initial violation, with subsequent violations increasing the maximum fine by \$5,000 each additional time.

The bill also would direct the court to order a person to remove the litter and remediate any damage caused to property resulting from the violation as part of its judgment of sentence for a misdemeanor conviction described above. If the violation occurred on railroad property, the court would have to order the person to reimburse the railroad for costs of litter removal and any necessary damage remediation.

If a prosecuting attorney intends to seek the increased fine for a second or subsequent littering violation for an amount of litter that is either three cubic feet to 135 cubic feet, or greater than 135 cubic feet, the prosecutor would have to list the prior conviction or convictions on the

complaint, and the existence of prior convictions would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

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

Additionally, HB 4325 would make violations of littering in the amount of three cubic feet or more applicable to a person and the person's employer or employing agency if the violation was done at the direction of, or with the knowledge of, the person's employer or employing agency.

For a littering violation, if a local community group, or village or township, or municipal, county, or state department has performed, or will perform, a cleanup or property remediation, the person responsible for that violation could be directed to reimburse that entity for the expense incurred. This reimbursement could be in addition to, or in lieu of, a state civil infraction or criminal conviction. A city, village, or township attorney, a prosecuting attorney for a county, or the attorney general could bring an action seeking reimbursement for expenses incurred for the cleanup of litter and remediating property damage. Any reimbursement costs assessed to a person could not exceed the actual cleanup and remediation costs. Funds collected as part of an order for reimbursement could be used in partnership with a local community group, or village or township, or municipal, county, or state department with the owner of the property where the littering occurred for the cleanup and remediation of that littering violation.

Finally, the bill would provide that a property owner has a civil cause of action for damages for the reasonable and necessary costs of cleanup and remediation. This would be in addition to any penal or civil fine ordered for a violation.

The bill would take effect 90 days after it is enacted.

MCL 324.8905a

BACKGROUND:

Illegal dumping of trash and other refuse is an increasing problem in the state, particularly in urban areas. According to the Detroit Department of Public Works,¹ in 2022, more than 700 tons of waste that has been illegally disposed of within the city is cleaned up by workers each week. The cost of cleanup and proper disposal of this trash leads to millions of dollars in additional spending by municipalities across the state, which detracts from what a municipality can spend on other services and increases costs that must be passed on to residents in order to maintain existing service. These direct costs are in addition to environmental issues caused by some of the materials that are illegally dumped and loss of enjoyment of neighborhoods by residents who live near common dumping areas.

¹ <https://www.freep.com/story/news/local/michigan/detroit/2022/07/05/illegal-dumping-detroit/7585311001/>

Bill proponents hope that increasing fines will lead to a reduction in illegally dumped waste, while providing additional funds for cleanup and enforcement actions to ensure compliance.

FISCAL IMPACT:

House Bill 4325 would have an indeterminate fiscal impact on the state and on local units of government. As the number of violations that would occur under provisions of the bill is not known, we cannot estimate the amount of additional revenue that would be collected.

Under the bill, first, second, or subsequent offenses of littering, over three cubic feet, would be misdemeanors, resulting in sanctions of penal fines. In addition to that, or in lieu of that, the offenses could result in sanctions of civil fines. Civil fine revenue could not exceed actual cleanup and remediation costs under the bill.

Any increase in penal or civil fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the state's Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch; the Departments of State Police, Corrections, Health and Human Services, and Treasury; and the Legislative Retirement System.

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 case complexity.

POSITIONS:

A representative of the Michigan Railroads Association testified in support of the bill.
(9-28-23)

The following entities indicated support of the bill:

- Department of Environment, Great Lakes, and Energy (9-28-23)
- Michigan Environmental Council (9-28-23)
- Michigan League of Conservation Voters (9-28-23)
- Michigan Manufacturers Association (9-28-23)
- Michigan Municipal League (10-5-23)
- Michigan Townships Association (9-28-23)
- Michigan United Conservation Clubs (10-5-23)
- Sierra Club of Michigan (10-5-23)

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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.