

HOUSE BILL ANALYSIS

HB 2586

Brief Description: Attempting to limit the incidents of rural garbage dumping.

Sponsors: Representatives Haigh and Cox.

Hearing: February 1, 2000

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

BACKGROUND:

It is unlawful to throw, drop, deposit, discard, or dispose of litter (not including cigarettes or other tobacco products) upon any public property, waters, or property not owned by the polluter.

Incorporated & Unincorporated Areas - A person found disposing litter in an amount less than or equal to one cubic foot in an incorporated or an unincorporated area is guilty of a Class III civil infraction. The maximum penalty for a Class III civil infraction is \$50.

A person found disposing litter in an amount greater than one cubic foot in an incorporated or an unincorporated area is guilty of a Class I civil infraction. Unless suspended or modified by the court, the offender must also pay a litter cleanup fee of \$25 per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the offender to pick up and remove the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The maximum penalty for a Class I civil infraction is \$250.

If the littering violation occurs in a state park, the court must, in addition to any other penalties assessed, order the person to perform 24 hours of community service in the state park where the violation occurred.

A person who discards a cigarette, cigar, or other tobacco product that is capable of starting a fire is guilty of a Class I civil infraction.

SUMMARY OF BILL:

It is unlawful to throw, drop, deposit, discard, or dispose of litter (not including cigarettes or other tobacco products) upon any public property, waters, or property not owned by the polluter.

Incorporated Area - A person disposing of litter in an amount less than or equal to one cubic foot in an incorporated area is guilty of a Class III civil infraction. The maximum penalty for a Class III civil infraction is \$50.

A person found disposing litter in an amount greater than one cubic foot in an incorporated area is guilty of a Class I civil infraction. The maximum penalty for a Class I civil infraction is \$250.

Unincorporated Area - A person disposing of litter in an amount less than or equal to one cubic foot in an unincorporated area is guilty of a Class III civil infraction. The maximum penalty for a Class III civil infraction is \$50.

A person found disposing litter in an amount greater than one cubic foot in an unincorporated area is guilty of a misdemeanor. The maximum penalty for a misdemeanor is imprisonment in a county jail for 90 days, or by a maximum fine of \$1,000, or both.

The person found disposing litter in an amount greater than one cubic foot must also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or \$50 per cubic foot of litter, whichever is greater. One half of the restitution fee must be distributed to the owner and the remaining half must be distributed to the law enforcement agency that investigated the incident.

The court may, in addition to or in lieu of part or all of the cleanup fee, order the offender to pick up and remove the litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

Hazardous Material - A person found littering in any amount, a hazardous substance in an unincorporated area of the county is guilty of a gross misdemeanor. The offender must also pay a litter cleanup restitution payment equal to twice the actual costs of cleanup or \$100 per cubic foot of litter, whichever is greater. One half of the restitution

payment must be distributed to the landowner and the remaining half must be distributed to the law enforcement agency investigating the incident.

Seizure of Equipment - A peace officer may seize without warrant vehicles, gear, appliances, or any other items or articles that they have probable cause to believe have been used in littering. Property seized may be recovered by its owner by depositing into court a cash bond equal to the value of the seized property, but not more than \$25,000. The cash bond is subject to forfeiture in lieu of the property.

In the event of a seizure of property, forfeiture proceedings must commence upon seizure. Within 15 days following the seizure, the seizing authority must serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the 15 day period following the seizure.

Persons claiming a right of ownership or right to possession of property are entitled to a hearing to contest forfeiture. Such a claim shall specify the true claim of ownership or possession and must be made in writing and served within 45 days of the seizure. If the seizing authority has complied with notice requirements and there is no claim made within 45 days, then the property must be forfeited to the enforcement agency that seized the property.

If the owner of the seized property notifies the enforcement agency with a claim to the seized property then that person must be given an opportunity to be heard as to the person's claim or right. The hearing must be before the administrator or the administrator's designee, or before an appointed administrative law judge. A person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the property seized is more than \$5,000.

At the hearing to contest forfeiture and any subsequent appeal, the seizing authority has the burden to demonstrate that it had reason to believe the property was held due to a violation of the Litter Control Act. The person contesting forfeiture has the burden of production and proof, by a preponderance of evidence, that the person owns or has a right to possess the property. In addition, the property owner must also prove that the property was not used in the littering violation, or if the property is a vehicle, that the vehicle was used without the owner's knowledge or consent, and that the owner acted reasonably to prevent illegal uses of the vehicle.

The enforcement agency that seizes any forfeited property must take into account that there may be a third party's interest (e.g., bank) in the property. A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission. No security interest in seized property may be perfected after seizure.

If seized property is forfeited, the enforcement agency may retain it for official use unless the property is required to be destroyed. In addition, upon application by any law enforcement agency, the property may be released to the agency for the use of enforcing the criminal law or they may chose to sell the property and retain the net proceeds for the use of expanding and improving the enforcement agency's litter control activity. Money retained may not be used to supplant preexisting funding sources.

FISCAL NOTE: Requested on February 2, 2000.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.