

HOUSE BILL REPORT

ESHB 2207

As Amended by the Senate

Title: An act relating to providing tools designed to reduce the impacts of unlawful solid waste dumping.

Brief Description: Providing tools designed to reduce the impacts of unlawful solid waste dumping.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Ramos, Low, Chapman, Couture and Reed).

Brief History:

Committee Activity:

Environment & Energy: 1/18/24, 1/30/24 [DPS];
Appropriations: 2/3/24, 2/5/24 [DPS(ENVI)].

Floor Activity:

Passed House: 2/12/24, 97-0.
Senate Amended.
Passed Senate: 3/1/24, 49-0.

Brief Summary of Engrossed Substitute Bill

- Reclassifies certain unlawful waste dumping violations as natural resource infractions rather than misdemeanor offenses.
- Empowers the same personnel that enforce civil littering infractions and littering crimes to enforce natural resource littering infractions.
- Reallocates half of the revenues from litter cleanup restitution payments to be used for waste disposal campaigns, especially those designed to reduce illegal dumping.
- Provides for the use of Model Toxics Control Operating Account funds on public participation grants that focus on combatting illegal dumping of hazardous materials and petroleum-containing products.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Doglio, Chair; Mena, Vice Chair; Abbarno, Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Barnard, Goehner and Sandlin.

Staff: Zachary Blinkinsop (786-7296) and Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Staff: Dan Jones (786-7118).

Background:

Unlawful Waste Dumping.

It is unlawful to abandon a junk vehicle or to dispose of litter on any public property, public waters, or the private property of any other person.

Penalties for the unlawful dumping of waste (littering) are assessed on a sliding scale depending on the amount of waste:

- It is a class 1 civil infraction to litter any potentially dangerous material in any amount; the maximum penalty and the default amount of a class 1 civil infraction involving potentially dangerous litter is \$500.
- It is a class 3 civil infraction to litter in an amount less than or equal to 1 cubic foot; the maximum penalty and the default amount of a class 3 civil infraction, not including statutory assessments, is \$50.
- It is a misdemeanor to litter in an amount greater than 1 cubic foot but less than 1 cubic yard; a misdemeanor fine may not exceed \$1,000 for individuals or \$50,000 for entities.
- It is a gross misdemeanor to litter in an amount equal to or greater than 1 cubic yard;

a gross misdemeanor fine may not exceed \$5,000 for individuals or \$250,000 for entities.

A person found guilty of misdemeanor littering must pay a litter cleanup restitution payment equal to twice the actual cost of cleanup or \$50 per cubic foot of litter, whichever is greater. A person found guilty of gross misdemeanor littering must pay a litter cleanup restitution payment equal to twice the actual cost of cleanup or \$100 per cubic foot of litter, whichever is greater.

The court distributes one-half of a restitution payment to the landowner of the property where the waste was littered and one-half of the restitution payment to the law enforcement agency investigating the incident.

Natural Resource Infractions.

Certain offenses involving forests and forest products, fish and wildlife, public lands, and public recreational lands, are classified as natural resource infractions. A natural resource infraction is not a criminal offense. A person found to have committed a natural resource infraction shall be assessed a monetary penalty. This penalty must be at least \$10, and it cannot exceed \$500 unless specifically authorized by statute.

Waste Reduction, Recycling, and Litter Control Account.

A litter tax is imposed on every manufacturer, wholesaler, and retailer doing business in the state. This tax is remitted into the Waste Reduction, Recycling, and Litter Control Account (Litter Control Account) and the Litter Control Account is administered by the Department of Ecology. The tax only applies to the value or the gross proceeds from the sale of products like food, groceries, cigarettes, containers, and toiletries. The receipts from the litter tax are primarily used for litter collection, waste reduction, recycling, and composting programs.

Model Toxics Control Operating Account.

Revenue from the pollution tax on hazardous substances and petroleum products is allocated to multiple accounts, including 60 percent of collections to the Model Toxics Control Operating Account (MTCA Operating Account). The MTCA Operating Account is used for hazardous waste planning and management, public education about hazardous waste, financial assistance for local waste programs, oil and hazardous spill prevention and training, and other similar uses. One percent of the pollution tax moneys deposited into the MTCA Operating Account is allocated for public participation grants to persons who may be adversely affected by hazardous substances and not-for-profit public organizations. The primary purpose of these grants is to facilitate participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances. The grants may not exceed \$60,000. The grants may be renewed annually.

Summary of Engrossed Substitute Bill:

It is a class 3 civil infraction to litter in an amount less than or equal to 1 cubic foot and is thus subject to a maximum default infraction penalty of \$50.

It is a natural resource infraction to litter in an amount more than 1 cubic foot and less than 10 cubic yards. Penalties for these littering violations are:

- up to \$250 for littering between 1 cubic foot and 1 cubic yard of material;
- up to \$750 for littering between 1 and 7 cubic yards of material; and
- up to \$1,000 for littering between 7 and 10 cubic yards of material.

The litter cleanup restitution payment is assessed at four times the actual cost of cleanup. The court distributes one-half of a litter cleanup restitution payment to the Waste Reduction, Recycling, and Litter Control Account (Litter Control Account) and one-half to the law enforcement agency investigating the incident.

All fines and bail forfeitures collected for littering violations are to be deposited into the Litter Control Account except as otherwise provided by statute.

Law enforcement officers who are authorized to enforce littering civil infractions and littering crimes are empowered to enforce the newly established natural resource infractions for littering. General peace officers who are authorized to take actions, including detentions, specified for natural resource infraction enforcement may take those same actions with respect to the enforcement of littering provisions.

Waste Reduction, Recycling, and Litter Control Account.

One hundred percent of the receipts from the litter cleanup restitution payments into the Litter Control Account is reserved for the Department of Ecology to award grants to local governments or nonprofit organizations for the purpose of reducing illegal dumping on public or private forestlands or other spaces. Qualifying projects must have project descriptions at reducing outdoor dumping or reducing the cost of legal waste disposal, such as education campaigns, free or reduced-cost collection days, income-based waste disposal coupons or vouchers, and other measures reasonably targeted at reducing illegal dumping.

Public Participation Grants.

The Legislature may appropriate additional money to the Model Toxics Control Operating Account for the use of public participation grants. Eligible public participation grants may focus on public education efforts targeted at reducing illegal dumping of hazardous materials or petroleum-containing products on public and private land.

EFFECT OF SENATE AMENDMENT(S):

As compared to the version of Engrossed Substitute House Bill 2207 passed by the House, the Senate striker makes the following changes:

- removes language from the legislative findings section that refers to the financial barrier lawful waste disposal can pose for some individuals and to the environmental hazards and clean-up costs of abandoned maritime vessels in upland areas;
- reclassifies as a misdemeanor littering more than one cubic foot but less than ten cubic feet but allows alternative punishment as a natural resource infraction;
- reduces the litter clean-up restitution payment assessed for gross misdemeanors from four-times to two-times the cost of actual clean-up;
- modifies the distribution of restitution payments, allocating to the landowner a portion equal to the actual cost of clean-up and the remainder to the law enforcement agency investigating the incident;
- removes new grant funding for litter reduction programs through the Waste Reduction, Recycling, and Litter Control Account;
- removes the expansion of the Model Toxics Control Operating Account's public participation grant program to include efforts to reduce illegal dumping of hazardous materials or petroleum-containing products; and
- removes language authorizing general peace officers to take actions to enforce the unlawful dumping statute, including detentions for a reasonable time and investigations.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Landowners spend a lot of money disposing of garbage that has been unlawfully dumped on their lands. Cleanup can cost as much as \$100,000. Recently there has been an increase in unlawful dumping, including dumping of appliances and automobiles. Rural areas are particularly hard hit because they are easy targets. Legal waste disposal can be expensive. It is often cheaper to pay a fine for unlawful dumping than it is to pay for disposal. This bill strikes a good balance between increased deterrence and additional resources for solid waste disposal. It lines up the measure of the penalty with the way that waste disposal is determined: by weight. Further improvements could include assistance to landowners to dispose of hazardous waste dumped on their properties.

(Opposed) None.

(Other) Unlawful dumping is best addressed by making disposal costs more affordable. A funding source based on penalties is unreliable. The new grant program would require a lot

of effort and energy and deserves more money. Regular law enforcement officers might not be able to enforce natural resource infractions like they can enforce civil infractions and crimes, thereby reducing the effectiveness of deterrence. Unlawful dumping is already not a high priority for law enforcement.

Staff Summary of Public Testimony (Appropriations):

(In support) Unlawful dumping is a growing problem in forest lands, including cars, boats, and tires. Hauling away illegally dumped objects is costly for landowners. This bill would help decrease garbage and put it where it belongs. Decriminalizing unlawful dumping would help improve enforcement opportunities, as happened with a similar policy impacting the Department of Fish and Wildlife. There is no one magic fix to unlawful dumping, and the bill presents a suite of options to offer relief. The derelict vessels policy in the bill would help in situations where the state doesn't currently have authority to take title and remove a vessel unless it is in water.

(Opposed) None.

Persons Testifying (Environment & Energy): (In support) Representative Bill Ramos, prime sponsor; Tom Davis, Washington Forest Protection Association; Holli Johnson, Rayonier; and Jason Callahan, Green Diamond Resource Company.

(Other) Peter Lyon, Department of Ecology; James McMahan, Washington Association of Sheriffs and Police Chiefs; Brian Considine, Department of Natural Resources; and Travis Dutton, Washington State Association of Counties.

Persons Testifying (Appropriations): Tom Davis; and Jason Callahan, Green Diamond Resource Company.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.