



**House
Legislative
Analysis
Section**

Washington Square Building Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

House Bill 4218 (Substitute H-5) **RECEIVED**
First Analysis (6-23-87)

JUL 16 1987

Sponsor: Rep. Mary C. Brown
Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

While various environmental statutes provide for administrative remedies and establish civil and criminal penalties for violation, pollution is not a crime punished as such by the Penal Code. Environmental statutes are inadequate, environmentalists say, in part because it is still too easy for a culpable individual to avoid personal punishment by hiding behind the corporate shield, thus contributing to problems with polluters, particularly those who ignore requirements to obtain licenses and permits, continuing to flagrantly violate environmental laws. Testimony before the House Judiciary committee cited one of the state's most notorious examples of an individual's disregard of environmental laws: that of the Berlin and Farro dumpsite in Swartz Creek. According to testimony, the state was unable to prosecute the person responsible because the burden of proof was too high. Although the Penal Code makes it a felony to intentionally poison any spring, well, or reservoir, among other things, the need for the prosecution to prove intent hampers enforcement. What is needed, it is said, are amendments to the Penal Code along the lines of what is contained in the federal Clean Water Act, which punishes with stiff fines and imprisonment individuals who negligently pollute.

THE CONTENT OF THE BILL:

The bill would add a new section to the Penal Code establishing criminal penalties for unlawful release of hazardous substances. A "knowing" release would be subject to higher penalties than a "negligent" release, and a release by a person or organization that knew that the release put another person in imminent danger would be subject to higher penalties than a "knowing" release.

A person convicted for the first time of negligently and unlawfully releasing a hazardous substance would be guilty of a misdemeanor punishable by up to one year in jail, a fine of up to \$25,000 per day of violation, or both. A subsequent conviction would be a felony punishable by up to two years in prison, a fine of up to \$50,000 per day, or both.

A first conviction of knowingly and unlawfully releasing a hazardous substance would be a felony punishable by up to three years in prison, a fine of not less than \$5,000 and not more than \$50,000 per day, or both. A subsequent conviction would be punishable by up to six years in prison, a fine of between \$10,000 and \$100,000 per day, or both.

An individual who released a hazardous substance knowing at the time that he or she placed another person in imminent danger of death or serious bodily injury would be guilty of a felony punishable by up to 15 years in prison, a fine of not less than \$25,000 and not more than \$250,000 per day, or both. An organization that did this would be punished by a fine of at least \$100,000 per day, up to \$1 million per day. A second or subsequent conviction of an organization would be punished by a minimum fine of \$200,000 per day, up to a maximum of \$2 million per day.

In determining whether an individual knew that his or her conduct placed another in imminent danger, both of the following would apply:

- the person would be responsible only for actual awareness or actual belief that he or she possessed; and
- knowledge possessed by a person other than the defendant could not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence could be used, including evidence that the defendant took steps to shield himself or herself from relevant information.

On a charge of knowingly placing another in imminent danger, it would be an affirmative defense to establish by a preponderance of the evidence that the conduct charged was consented to by the person endangered and the danger and conduct were reasonably foreseeable hazards of an occupation or, if professionally approved methods had been used and the person endangered informed of risks, medical treatment or scientific experimentation.

Misrepresentation in documents required by various Michigan environmental statutes, or tampering with a monitoring device required by one of those laws would be a felony punishable by up to two years in prison, a fine of not less than \$5,000 and not more than \$25,000, or both. A second or subsequent conviction would be punishable by up to four years in prison, a fine of not more than \$20,000, or both (Note: this last penalty lacks a minimum fine, an inconsistency which is apparently an inadvertent oversight).

The release of more than one pollutant in a single operational occurrence would be treated as a single violation.

If a sentencing judge failed to impose a term of imprisonment, he or she would have to state on the record or in writing why, under the circumstances involved in the case, a prison term would be unjust.

MCL 750.435A

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would give the state an important enforcement tool to use against those who violate environmental laws. Individuals, not just their companies, would be subject to prison terms and financial penalties commensurate with the severity of the offense and the level of proof required. Pollution that continued over time would be combated with a penalty structure that applied fines per day of violation. The bill is not unreasonable: the absence of minimum

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mandatory fines for negligent releases would give judges the discretion to punish appropriately defendants whose blame may be minimal. Further, the bill would not impose any new environmental restrictions; it simply would supplement the penalties for violating existing ones. Its penalties are not entirely new; they are based on those found in the federal Clean Water Act. The successful prosecutions and deterrent effect that the bill would engender would remove an element of unfair competition from the marketplace. Those who undertake the expense of complying with environmental regulations should not suffer unfair competition from those who do not. The bill offers strong protections for the environment, the public, and legitimate businesses.

Against:

The bill is premature and overly harsh. State policymakers and interest groups affected by environmental laws plan to meet this summer to comprehensively examine environmental enforcement problems. The bill's proposals should be part of those discussions. Further, the bill would attach stiff penalties to acts of ordinary negligence, meaning that some person who did not know any better could be severely punished for dumping a pollutant such as gasoline on the ground. This would be possible because "negligence" is merely the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do.

POSITIONS:

The Department of Natural Resources supports the bill.
(6-22-87)

The Department of Public Health supports the bill. (6-22-87)

The Michigan Environmental Council supports the bill.
(6-18-87)

A representative from Public Interest Research Group in Michigan (PIRGIM) testified in support of the bill. (6-16-87)

The Department of State Police is supportive of the bill.
(6-18-87)

The Michigan Chemical Council opposes the bill. (6-18-87)

The Michigan Manufacturers Association opposes the bill.
(6-18-87)

The Michigan Merchants Council opposes the bill. (6-19-87)

The Michigan State Chamber of Commerce opposes the bill. (6-18-87)