

SENATE BILL REPORT

ESHB 2207

As Reported by Senate Committee On:
Environment, Energy & Technology, February 21, 2024
Ways & Means, February 26, 2024

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: Passed House: 2/12/24, 97-0.

Committee Activity: Environment, Energy & Technology: 2/20/24, 2/21/24 [DP-WM].
Ways & Means: 2/24/24, 2/26/24 [DPA].

Brief Summary of Amended Bill

- Revises the criteria for violations, the value of penalties, and the value of restitution payments issued under the unlawful waste dumping statute.
- Allows misdemeanor violations to be punished alternatively as natural resource infractions.
- Modifies the distribution of restitution payments, awarding landowners a portion equal to the actual cost of cleanup and distributing the remainder to the law enforcement agency investigating the incident.
- Authorizes enforcement of natural resource infractions by designated authorities.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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.

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Adam Brunmeier (786-7357)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Randall, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Jed Herman (786-7346)

Background: Unlawful Waste Dumping. It is unlawful to abandon junk vehicles or dispose of litter on public property, public waters, or the private property of another person.

Penalties for unlawful waste dumping 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;
- it is a class 3 civil infraction to litter in an amount less than or equal to one cubic foot;
- it is a misdemeanor to litter in an amount greater than 1 cubic foot but less than one cubic yard; and
- it is a gross misdemeanor to litter in an amount equal to or greater than one cubic yard.

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. The Litter Control Account is primarily administered by the Department of Ecology. Funds in the account are used for litter collection, waste reduction, recycling, and composting programs. The account is funded primarily by the litter tax imposed on manufacturers doing business in Washington State.

Model Toxics Control Operating Account. The Model Toxics Control Operating Account (MTCA) 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 is allocated for public participation grants to persons who may be adversely affected by hazardous substances and not-for-profit public organizations.

Summary of Bill: Unlawful Waste Dumping. Litter in an amount more than one cubic foot and less than ten cubic yards is a misdemeanor. Misdemeanor violations may alternatively be punished as a natural resource infraction. Penalties for these littering violations are:

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

In addition to penalties provided for misdemeanors, gross misdemeanors, or natural resource infractions violators must pay a litter cleanup restitution payment. The litter cleanup restitution payment for natural resource infractions and misdemeanors is assessed at four times the actual cost of cleanup. The litter cleanup restitution payment for gross misdemeanors is assessed at two times the actual cost of cleanup. The court distributes a portion of the restitution payment equal to the actual cost of cleanup to landowners and the remainder to the local law enforcement agency investigating the incident.

Any person authorized to enforce natural resource infractions is authorized for purposes of the unlawful dumping statute, with or without an interlocal agreement.

Summary of Amended Bill:

- Reclassifies litter in an amount greater than one cubic foot but less than ten cubic yards as a misdemeanor but allows for alternative punishment with notice of a natural resource infraction.
- Reduces the litter cleanup restitution payment for gross misdemeanors from four times the actual cost of cleanup to two times the actual cost of cleanup.
- Modifies the distribution of litter clean-up restitution payments, distributing a portion to the landowner equal to the cost of cleanup and the remainder to the law enforcement agency investigating the incident.

- Removes language creating new grant funding for litter reduction programs through the waste reduction, recycling, and litter control account.
- Removes language extending the model toxics control operating account's public participation grant program to efforts to reduce illegal dumping of hazardous materials or petroleum-containing products.
- Removes the 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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Environment, Energy & Technology): PRO: Unlawful dumping is a growing problem in public and private forest lands that imposes high costs on landowners. Law enforcement is reluctant to enforce litter and dumping laws so a new approach to enforcement and a new deterrent are required. Fish and Wildlife saw better enforcement outcomes by decriminalizing and switching to natural resource infractions. Increased enforcement and increased deterrence means more funding and the new law will help redirect that funding into programs aimed at reducing unlawful dumping.

OTHER: The penalties will be insufficient to support the programs. The number of penalties issued is currently very low. Penalties will be inconsistent. The evidentiary burden to issue penalties has been historically very difficult to meet which is why penalties are so rare.

Persons Testifying (Environment, Energy & Technology): PRO: Tom Davis, Washington Forest Protection Association; Jason Callahan, Green Diamond Resource Company.

OTHER: Peter Lyon, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We have a dirty little secret, people are dumping all kinds of things in the forest and it is costing us \$50,000 to \$100,000 per year to clean it up. We need a different method from

what is currently in statute for enforcement. We have some restructuring ideas that we think will help with enforcement actions.

Persons Testifying (Ways & Means): PRO: Tom Davis, Washington Forest Protection Association; Jason Callahan, Green Diamond Resource Company.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.