

Senate Fiscal Agency
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SFA

BILL ANALYSIS

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Senate Bill 402 (Substitute S-1 as reported)
Senate Bill 403 (Substitute S-1 as reported)
Senate Bill 404 (Substitute S-1 as reported)
Senate Bill 405 (Substitute S-1 as reported)
Senate Bill 406 (Substitute S-1 as reported)
Senate Bill 407 (Substitute S-1 as reported)
Senate Bill 408 (Substitute S-1 as reported)
Senate Bill 409 (Substitute S-1 as reported)
Senate Bill 410 (Substitute S-1 as reported)
Senate Bill 411 (Substitute S-1 as reported)
Sponsor: Senator William Van Regenmorter (Senate Bill 402)
Senator Bev Hammerstrom (Senate Bill 403)
Senator Valde Garcia (Senate Bill 404)
Senator Christopher D. Dingell (Senate Bill 405)
Senator Bill Schuette (Senate Bill 406)
Senator Thaddeus G. McCotter (Senate Bill 407)
Senator Bill Bullard, Jr. (Senate Bill 408)
Senator Harry Gast (Senate Bill 409)
Senator Martha G. Scott (Senate Bill 410)
Senator Gary Peters (Senate Bill 411)

Committee: Judiciary

Date Completed: 5-9-01

RATIONALE

Michigan's statutes that provide punishment for property offenses generally distinguish between misdemeanors and felonies based on monetary values. It has been suggested that the felony threshold should be raised for several offenses that involve illegally obtained money or property, and that graduated penalties should be established for these violations, as was done for a number of larceny offenses in 1998. Before the passage of Public Acts 311 and 312 of 1998, larceny offenses in the Michigan Penal Code typically included a felony threshold of \$100, although it was as low as \$5 (for larceny from a motor vehicle or trailer) or as high as \$500 (for use of utility service without consent). For simple larceny, the \$100 threshold had remained unchanged since 1957. In the ensuing years, the effect of inflation alone made felonies out of offenses that once would have been considered misdemeanors.

Public Acts 311 and 312 raised the felony threshold level for various larceny and bad check offenses, and established a graduated penalty structure for those offenses. Under that system, misdemeanor penalties apply to violations involving less than \$200 and more

severe misdemeanor penalties apply to violations involving \$200 or more but less than \$1,000; felony penalties apply to violations involving \$1,000 or more but less than \$20,000 and more severe felony penalties apply to violations involving \$20,000 or more. The greater penalties also apply to violations involving lower values, when the offender has prior convictions. Other violations of law, involving fraudulent acts or destruction of property and proscribed in statutes other than the Penal Code, continue to have the lower \$100 felony threshold that applied to most larceny offenses before 1998. Some people believe that those offenses should be subject to the same felony threshold and graduated penalty structure that has applied to larceny offenses since 1998.

CONTENT

Senate Bills 402 (S-1), 404 (S-1), 406 (S-1), 408 (S-1), and 410 (S-1) would amend various acts to increase the felony threshold and establish graduated sanctions for various offenses involving illegally obtained money or property. The

bills also specify that violations in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value of a violation for purposes of meeting the felony threshold and graduated penalty structure. Senate Bill 402 (S-1) would amend the crime victim's compensation law; Senate Bill 404 (S-1) would amend the Michigan Family Farm Development Act; Senate Bill 406 (S-1) would amend the Construction Lien Act; Senate Bill 408 (S-1) would amend the State Housing Development Authority Act; and Senate Bill 410 (S-1) would amend the Natural Resources and Environmental Protection Act (NREPA).

Senate Bills 403 (S-1), 405 (S-1), 407 (S-1), 409 (S-1), and 411 (S-1) would amend the Code of Criminal Procedure to revise the sentencing guidelines consistent with the proposed increased felony thresholds and penalties.

In addition, Senate Bills 402 (S-1), 404 (S-1), 406 (S-1), 408 (S-1), and 410 (S-1) all specify that, if the prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of a defendant's prior conviction or 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 relevant evidence, 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.

The bills would take effect on September 1, 2001. Senate Bill 403 (S-1) is tie-barred to Senate Bill 402; Senate Bill 405 (S-1) is tie-barred to Senate Bill 404; Senate Bill 407 (S-1) is tie-barred to Senate Bill 406; Senate Bill 409 (S-1) is tie-barred to Senate Bill 408; and Senate Bill 411 (S-1) is tie-barred to Senate Bill 410.

Senate Bill 402 (S-1)

The crime victim's compensation law prohibits the presentation of false information about a crime to the Crime Victim Services Commission, with intent to defraud or cheat, causing an award of money to be made to any person. Currently, if the award is less than \$100, the violation is a misdemeanor punishable by up to three months' imprisonment and/or a maximum fine of \$1,000. If the award is \$100 or more, the violation is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$15,000.

Under the bill, a violation would be a misdemeanor or a felony, as shown in Table 1, based upon the amount of the award and the offender's prior convictions for defrauding the Commission.

Table 1
Penalties Under Senate Bills
402 (S-1), 404 (S-1), 406 (S-1), & 408 (S-1)

Amount Involved	Offense	Max. Fine	Max. Term
<\$200; first offense	Misd.	\$500 or 3x value ^{a)}	93 days
\$200 to <\$1,000; or <\$200 w/ 1 or more priors	Misd.	\$2,000 or 3x value ^{b)}	1 year
\$1,000 to <\$20,000; or \$200 to <\$1,000 w/ 1 or more priors ^{c)}	Felony	\$10,000 or 3x value ^{b)}	5 years
\$20,000 or more; or \$1,000 to <\$20,000 w/ 2 or more priors ^{c)}	Felony	\$15,000 or 3x value ^{b)}	10 years

^{a)} Under Senate Bill 402 (S-1), the maximum fine would be \$500; under the other bills, the maximum fine would be \$500 or three times the value involved in the offense, whichever was greater.
^{b)} Under all four bills, the maximum fine would be the amount shown or three times the value involved in the offense, whichever was greater.
^{c)} A prior conviction would not include an offense involving less than \$200.

Senate Bill 403 (S-1)

Currently, under the sentencing guidelines, false presentation to the Crime Victim Services Commission to obtain more than \$100 is a Class E property felony, with a statutory maximum sentence of 10 years' imprisonment. Under the bill, false presentation to the Commission to obtain \$1,000 to \$20,000, or \$200 to under \$1,000 with prior convictions, would be a Class E property felony, with a statutory maximum sentence of five years' imprisonment. False presentation to obtain \$20,000 or more, or \$1,000 to less than \$20,000 with prior convictions, would be a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 404 (S-1)

The Michigan Family Farm Development Act prohibits obtaining any money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service provided under the Act, including participation in a program established under the Act, with the intent to defraud or cheat and by false pretenses, including a false statement or representation. If the violation involves \$100 or less in value, the offense is a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$100. If the violation involves more than \$100 in value, the offense is a felony punishable by 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, a violation would be a misdemeanor or a felony based on the value of the proceeds and the offender's prior convictions under the Act, as shown in Table 1.

Senate Bill 405 (S-1)

Currently, under the sentencing guidelines, falsely obtaining money or agricultural land is a Class E felony against the public trust, with a statutory maximum sentence of 10 years' imprisonment. Under the bill, false pretenses under the Michigan Family Farm Development Act involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, would be a Class G property felony, with a statutory maximum sentence of five years' imprisonment. False pretenses under that Act involving \$20,000 or more, or \$1,000 to less than \$20,000 with prior convictions, would be a Class E property felony, with a statutory

maximum sentence of 10 years' imprisonment.

Senate Bill 406 (S-1)

The Construction Lien Act prohibits a contractor or subcontractor who desires to draw money from giving or causing to be given to any owner or lessee a false sworn statement, with intent to defraud. The violation is a misdemeanor if the statement involved is for \$100 or less and a felony if it is for more than \$100.

Under the bill, a violation would be a misdemeanor or a felony, as shown in Table 1, based upon the amount of the statement and the offender's prior convictions under the Act.

Senate Bill 407 (S-1)

Currently, under the sentencing guidelines, a false sworn statement by a contractor is a Class F property felony, with a statutory maximum sentence of four years' imprisonment. Under the bill, a false sworn statement by a contractor involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, would be a Class E property felony, with a statutory maximum sentence of five years' imprisonment. A false sworn statement by a contractor involving \$20,000 or more, or \$1,000 to less than \$20,000 with prior convictions, would be a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 408 (S-1)

The State Housing Development Authority Act prohibits obtaining money, real or personal property, or the use of an instrument, facility, article, or other valuable thing or service including participation in programs initiated under the Act, with intent to defraud or cheat by false pretense. If the value of the land, money, property, or other valuable thing or service is \$100 or less, the violation is a misdemeanor. If the value is more than \$100, the violation is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, a violation would be a misdemeanor or a felony based upon the value involved and the offender's prior convictions under the Act, as shown in Table 1.

Senate Bill 409 (S-1)

Currently, under the sentencing guidelines, a violation of the State Housing Development Authority Act involving false pretenses over \$100 is a Class G property felony, with a statutory maximum sentence of 10 years' imprisonment. Under the bill, false pretenses under that Act involving \$1,000 to \$20,000, or \$200 to less than \$1,000 with prior convictions, would be a Class E property felony, with a statutory maximum sentence of five years' imprisonment. A violation involving more than \$20,000, or \$1,000 to less than \$20,000 with prior convictions, would be a Class D property felony, with a statutory maximum sentence of 10 years' imprisonment.

Senate Bill 410 (S-1)

The NREPA prohibits the unauthorized removal of forest products or property from State-owned land, and the unauthorized removal or transport of Christmas trees, boughs, and certain other plants. The current penalties are based on the damages resulting from a violation and the offender's prior convictions for the particular offense, as shown in Table 2.

Table 2
Current Penalties for Unauthorized
Removal of Property

Damages	Offense	Fine	Max. Term
\$100 or less; 1st offense	Civil	\$500 max	NA
\$100 or less; repeat offense	Misd.	\$50 min/ \$500 max	90 days
>\$100 but <\$1,000	Misd.	\$500 min/ \$5,000 max	180 days
\$1,000 or more	Felony	\$1,000 min/ \$10,000 max	180 days
Note: The sentence for a criminal offense also may include the costs of prosecution.			

The NREPA also prohibits recovering, altering, or destroying abandoned property that is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great

Lakes bottomlands preserve, except with a permit issued jointly by the Secretary of State and the Department of Natural Resources. Currently, a violation involving property with a fair market value of \$100 or more is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$5,000.

The bill would create a new penalty structure for these offenses, as shown in Table 3.

Table 3
Proposed Penalties for Unauthorized
Removal of Property and
Bottomland Violations

Damages/ Value	Offense	Max. Fine	Max. Term
<\$100; 1st offense	Misd.	\$500	93 days
<\$100; repeat offense	Misd.	\$1,000	1 year
\$100 to <\$500; 1st or 2nd offense	Misd.	\$1,000 or 3x value ^{a)}	1 year
\$100 to <\$500; 3rd offense or more ^{b)}	Felony	\$2,000	2 years
\$500 or more	Felony	\$2,000 or 3x value ^{a)}	2 years
^{a)} The maximum fine would be the amount shown or three times the value, whichever was greater ^{b)} A prior conviction would not include an offense involving less than \$100.			

Senate Bill 411 (S-1)

Currently, under the sentencing guidelines, removal of or damage to State-owned property resulting in damages of \$1,000 or more is a Class H property felony, with a statutory maximum sentence of 180 days' imprisonment. Under the bill, damage to State property involving \$100 to \$500, with a prior conviction, or involving \$500 or more, would be a Class G property felony, with a statutory maximum sentence of two years' imprisonment.

Currently, illegally cutting, removing, or transporting a tree or other plant, involving a value of \$1,000 or more, is a Class H property felony with a statutory maximum sentence of 180 days' imprisonment. Under the bill, damage to a plant involving \$100 to \$500, with a prior conviction, or involving \$500 or more, would be a Class G property felony, with a statutory maximum sentence of two years' imprisonment.

Currently, recovering abandoned property in the Great Lakes without a permit is a Class G felony against the public trust, with a statutory maximum sentence of two years' imprisonment. Under the bill, recovering abandoned property in the Great Lakes having a value of \$100 to \$500 with a prior conviction, without a permit, and recovering abandoned property in the Great Lakes having a value of \$500 or more, without a permit, would be a Class G property felony, with a statutory maximum sentence of two years' imprisonment.

MCL 18.366 (S.B. 402)
777.11 (S.B. 403)
285.279 (S.B. 404)
777.12 (S.B. 405)
570.1110 (S.B. 406)
777.15 (S.B. 407)
125.1447 (S.B. 408)
777.11 (S.B. 409)
324.2157 et al. (S.B. 410)
777.13 (S.B. 411)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would update and standardize criminal sanctions for various fraud and resource destruction violations, consistent with changes made for larceny offenses in 1998. By increasing the dollar amount of the misdemeanor/felony threshold and implementing a four-tier penalty structure that would offer stiffer penalties for the most egregious offenses and allow strong misdemeanor penalties for some offenses that currently may be prosecuted as felonies, the bills would address the changes that have occurred in the prosecution of those offenses due to normal inflationary increases over the years. Also, by making even the lesser

misdemeanor offenses subject to a 93-day maximum sentence, the bills would ensure that those offenders were fingerprinted and their criminal records maintained. The bills thus would enable law enforcement personnel to identify repeat violators more easily.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 402 (S-1) through 411 (S-1) would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many offenders a year are convicted of the misdemeanors subject to the bills. To the extent that Senate Bills 402 (S-1), 404 (S-1), 406 (S-1), and 408 (S-1) would increase the misdemeanor ceiling from \$100 to \$1,000 by forming two misdemeanor offenses, more offenders could be convicted of a misdemeanor. More offenders also could be convicted of a misdemeanor to the extent that two misdemeanors would be formed by Senate Bill 410 (S-1). An increase in the number of offenders convicted of a misdemeanor would reduce the number of offenders sentenced to State incarceration or supervision. However, costs of incarceration or supervision for local government would increase, especially as the penalty would increase in certain circumstances to a maximum of one year. The daily costs of incarceration vary among the counties from \$27 to \$65 per prisoner.

The potential fiscal impact of the bills' felony penalties is described below.

Senate Bills 402 (S-1) and 403 (S-1)

According to the 1998 Department of Corrections' Statistical Report, there were no offenders convicted of the felony offense of falsely presenting facts and circumstances of a crime to cause an award of money from the Crime Victim Services Commission. To the extent that the felony dollar threshold would increase from \$100 to \$1,000, more offenders could be convicted a misdemeanor. Also, in certain circumstances the maximum penalty for the felony would be reduced from 10 years' incarceration to five years. However, the cost of incarceration is determined by the length of minimum sentence, and the incorporation of these offenses in the sentencing guidelines would increase the 10-

year maximum felony from a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months, to a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months. The five-year felony would be incorporated in the sentencing guidelines as a Class E felony.

Senate Bills 404 (S-1) and 405 (S-1)

According to the 1998 Department of Corrections' Statistical Report, there were no offenders convicted of the felony violation of the Michigan Family Farm Development Act. To the extent that the felony dollar threshold would increase from \$100 to \$1,000, more offenders could be convicted a misdemeanor. Also, in certain circumstances the maximum penalty for the felony would be reduced from 10 years' incarceration to five years. However, the cost of incarceration is determined by the length of minimum sentence. The 10-year maximum felony would be a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months and the five-year felony would be incorporated in the sentencing guidelines as a Class G felony with a minimum sentencing guideline range from 0-3 months to 7-23 months.

To the extent that the crime would be changed from public trust to property, one additional offense variable concerning the lethal potential of a weapon involved would be considered. Additional offense variable points would tend to increase the length of minimum sentence.

Senate Bills 406 (S-1) and 407 (S-1)

According to the 1998 Department of Corrections' Statistical Report, there was one offender convicted of the felony of a sworn false statement by a contractor and the offender received a probation sentence. To the extent that the felony dollar threshold would increase from \$100 to \$1,000, more offenders could be convicted a misdemeanor. However, based on the circumstance of the crime, the maximum length of incarceration for this felony would be increased from four years to five or 10 years. The 10-year maximum felony would be a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months and the five-year felony would be incorporated in the sentencing guidelines as a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months, while under current law the four-year felony is a Class F with a minimum sentencing

guideline range from 0-3 months to 17-30 months. The minimum sentence is determinate of the cost of incarceration. Assuming that one offender a year would be sentenced for the longest minimum sentence, then the cost of incarceration for this crime would increase by \$14,000 per year for the five-year offense or \$84,000 for the 10-year offense.

Senate Bills 408 (S-1) and 409 (S-1)

According to the 1998 Department of Corrections' Statistical Report, there were no offenders convicted of the felony violation of the State Housing Development Authority Act. To the extent that the felony dollar threshold would increase from \$100 to \$1,000, more offenders could be convicted a misdemeanor. Also, in certain circumstances the maximum penalty for the felony would be reduced from 10 years' incarceration to five years. However, the cost of incarceration is determined by the length of minimum sentence. The 10-year maximum felony would decrease from a Class C felony with a minimum sentencing guideline range from 0-11 months to 62-114 months, to a Class D felony with a minimum sentencing guideline range from 0-6 months to 43-76 months, and the five-year felony would be incorporated in the sentencing guidelines as a Class E felony with a minimum sentencing guideline range from 0-3 months to 24-38 months.

Senate Bills 410 (S-1) and 411 (S-1)

There are no data available to determine how many offenders a year are convicted of the felony of damaging State property, illegally cutting, removing, or transporting trees or other plants, or recovering abandoned property in the Great Lakes. Under the bills, the maximum penalty for these felonies would be increased from 180 days to two years and their minimum sentence would increase from a Class H felony with a minimum sentencing guideline range from 0-1 month to 5-17 months, to a Class G felony with a minimum sentencing guideline range from 0-3 months to 7-23 months. In most cases, the minimum sentence would not be long enough to qualify for a State prison sentence and offenders would serve a term of probation or incarceration in a county jail.

To the extent that the crime would be changed from public trust to property, one additional offense variable concerning the lethal potential of a weapon involved would be considered. Additional offense variable points would tend to increase the length of minimum sentence.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.