~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 25, 2018

**H. 4458**

Introduced by Reps. Johnson, Hixon, Kirby, Yow, Duckworth, Burns, Blackwell, Dillard, Davis, Forrest, Fry, Hewitt, Crawford, McGinnis, Ott, Bamberg, Erickson, Cobb‑Hunter, Willis, Mace, Hill, Gagnon, West, Hardee, Wheeler, McEachern, Magnuson, Martin and Bowers

S. Printed 4/25/18--S.

Read the first time January 31, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4458) to amend Section 16‑11‑700, Code of Laws of South Carolina, 1976, relating to the dumping of litter on private or public property and its penalties, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 4 by striking line 24 and inserting therein the following:

/ the penalty that must be equal to the amount of ~~five~~ twenty-five dollars an hour /

Amend the bill further, as and if amended, page 5, by striking line 9 and inserting therein the following:

/ 44, the latter controls.

(L) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by House Agriculture, Natural Resources, and Environmental Affairs on**

**January 30, 2018**

**State Expenditure**

The amended bill restructures provisions related to the illegal dumping of litter on private and public property and waters of the state. Currently, illegal dumping violations are misdemeanor offenses that may assess monetary penalties, prison terms, and/or litter-gathering public service hours. This bill expands the definition of solid waste and litter to include “cigarettes and cigarette component litter” rather than the previous “cigarettes and cigarette filters.” The bill would also exempt littering on private property by the property’s legal owner or by a person granted permission by the owner.

Currently, littering violations are categorized by weight. Existing law establishes that depositing a collection of litter or garbage (regardless of specific weight or volume) in an area or facility not intended for public deposit carries a fine of $1,000. The bill would alter existing penalties for littering. The bill removes any references to volume in cubic feet leaving only references to the weight of the material deposited. This bill changes the fine for littering in an amount weighing 15 pounds or less to $25 - $100 rather than the current $200. The bill removes references to “public” service and requires that the mandatory 8 hour service component be either litter gathering or “community” service. In addition, repeat violations of littering 15 pounds or less would no longer be subject to enhanced penalties.

The amended bill assigns a different fine to persons that deposits a collection of litter or garbage in particular areas or facilities not intended for public deposit. This subsection specifies that the deposit of garbage must not exceed 15 pounds in weight and changes the fine to not less than $50 nor more than $150. Violators must also perform a minimum of 16 hours of litter-gathering labor or other community service. The following items are specifically referenced within this subsection: cigarette butts and components, beverage containers, plastic bottles, plastic containers, solid waste, white goods, yard trash, and construction and demolition debris.

The proposed bill would alter the definition of the offense of littering more than 15 pounds but less than 500 pounds by specifically defining the types of property covered, which includes waterways. The bill amends the first offense by reducing the potential jail time for convictions from not more than 90 days to not more than 30 days and adds a mandatory requirement for at least 16 hours of litter-gathering labor or other community service. The bill expands the sentencing for second and third convictions to include the following:

 Second offense violations – a fine of not more than $200 nor more than $500 or imprisonment for not more than 30 days, along with 24 hours of mandatory litter-gathering labor or other community service.

 Third or subsequent offenses – a fine of not more than $200 nor more than $500 or imprisonment for not more than 30 days, along with 32 hours of mandatory litter-gathering labor or other community service.

The bill also specifies that illegal dumping consists of the disposal of more than 15 pounds of any solid waste, litter, or other materials, including discarded, deceased animals or animal parts, which would constitute a public health hazard. The proposed bill would give summary courts jurisdiction over all violations, including cases which cover dumping in excess of 500 pounds and carry a potential jail sentence of up to one year. Furthermore, the bill enables local governments to retain their authority to enforce ordinances related to the upkeep of property and specifies that in cases of conflict between rules, the Solid Waste Policy and Management Act takes legal precedence over the provisions established by the bill.

**Judicial Department.** The department indicates that any additional general fund expenses associated with increased caseloads can be absorbed within existing appropriations.

**Prosecution Coordination Commission**. The commission indicates that the implementation of this bill will have no expenditure impact on the general fund, other funds, or federal funds.

**Commission on Indigent Defense.** The commission indicates that the implementation of this bill will have no expenditure impact on the general fund, other funds, or federal funds.

**State Revenue**

This bill adds penalties and imprisonment time for second and subsequent convictions associated with the dumping of litter. Although these cases will be tried in summary courts, existing law distributes revenue generated from fines, assessments, and surcharges imposed for convictions in summary courts among the general fund, specified state agencies and programs, and local governments. Since the number of additional cases that may be assigned to summary courts pursuant to convictions of second and subsequent offenses is unknown, the revenue impact on the general fund is undetermined.

**Local Expenditure**

This bill gives summary courts jurisdiction over all violations of dumping litter and adds penalties for second and subsequent convictions. For a second conviction, the person must be fined not less than $200 dollars nor more than $500 or imprisoned for not more than 30 days. In addition, the court shall require the violator to complete 24 hours of litter-gathering labor or other community service. For a third or subsequent conviction, the person must be fined not less than $200 nor more than $500 or imprisoned for not more than 30 days. Additionally, the court shall require the violator to complete 32 hours of litter-gathering labor or other community service.

The Judicial Department indicates that there were approximately 1,000 prosecutions brought in the summary courts during FY 2016-17 due to the illegal dumping of litter on private or public property. However, the number of additional cases that may be tried in summary courts due to the addition of the penalties and imprisonment for second and subsequent offenses associated with violations of this bill is undetermined. As a result, the bill’s expenditure impact on local law enforcement, proceedings in summary court, and local detention facilities is undetermined.

**Local Revenue**

This bill gives summary courts jurisdiction over all violations of dumping litter and adds penalties for second and subsequent convictions associated with the dumping of litter. For a second conviction, the person must be fined not less than $200 dollars nor more than $500 or imprisoned for not more than 30 days. In addition, the court shall require the violator to complete 24 hours of litter-gathering labor or other community service. For a third or subsequent conviction, the person must be fined not less than $200 nor more than $500 or imprisoned for not more than 30 days. Additionally, the court shall require the violator to complete 32 hours of litter-gathering labor or other community service.

The Judicial Department indicates that there were approximately 1,000 prosecutions brought in the summary courts during FY 2016-17 due to the illegal dumping of litter on private or public property. Existing law distributes revenue generated from fines, assessments, and surcharges imposed for conviction in summary courts among the general fund, specified state agencies and programs, and local governments. Since the number of additional cases that may be tried in summary court due to the addition of the offenses associated with second and subsequent offenses of dumping litter is unknown, the revenue impact on local governments is undetermined.

Persons convicted of the littering offenses by general sessions or family courts must pay 107.5 percent of the fine imposed as an assessment. The assessment is based on the portion of the fine that is not suspended and may not be waived, reduced, or suspended. The assessment is paid to the clerk of court in the county in which the criminal judgment is rendered for remittance to the State Treasurer. The county will retain 35.35 percent of the assessment amount to use for the provision of services for the victims of crime. The State Treasurer will deduct from the collected assessment monies all amounts required to fund the State Auditor’s Office to conduct audits of local governments and local courts, as well as amounts required to fund annual training for counties, municipalities, and court employees on the collection and distribution of assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated in family court, circuit court, magistrates court, and municipal court. Thereafter, the State Treasurer will deposit the balance of assessments received as follows:

 42.08 percent for programs related to Probation, Parole and Pardon;

 14.74 percent to the Law Enforcement Training Council;

 0.45 percent to the Department of Public Safety;

 14.46 percent to the Office of Indigent Defense;

 11.83 percent for the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;

 15.39 percent to the general fund;

 0.89 percent to the Office of the Attorney General; and

 0.16 percent to the Office of the State Treasurer.

Persons convicted of the littering offenses by magistrates courts must pay 107.5 percent of the fine imposed as an assessment. The assessment is based on the portion of the fine that is not suspended and may not be waived, reduced, or suspended. The assessment is paid to the clerk of court in the county in which the criminal judgment is rendered for remittance to the State Treasurer. The county will retain 11.16 percent of the assessment amount to use for the provision of services for the victims of crime. The State Treasurer will deduct from the collected assessment monies all amounts required to fund the State Auditor’s Office to conduct audits of local governments and local courts, as well as amounts required to fund annual training for counties, municipalities, and court employees on the collection and distribution of assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated in family court, circuit court, magistrates court, and municipal court. Thereafter, the State Treasurer will deposit the balance of assessments received as follows:

 32.36 percent for programs related to Probation, Parole and Pardon;

 20.72 percent to the Law Enforcement Training Council;

 0.60 percent to the Department of Public Safety;

 18.82 percent for the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;

 15.93 percent to the general fund;

 10.49 percent to the Office of Indigent Defense;

 0.92 percent to the Office of the Attorney General; and

 0.16 percent to the Office of the State Treasurer.

Persons convicted of the littering offenses by municipal courts must pay 107.5 percent of the fine imposed as an assessment. The assessment is based on the portion of the fine that is not suspended and may not be waived, reduced, or suspended. The assessment is paid to the municipal clerk of court for remittance to the State Treasurer. The county will retain 11.16 percent of the assessment amount to use for the provision of services for the victims of crime. The State Treasurer will deduct from the collected assessment monies all amounts required to fund the State Auditor’s Office to conduct audits of local governments and local courts, as well as amounts required to fund annual training for counties, municipalities, and court employees on the collection and distribution of assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated in family court, circuit court, magistrates court, and municipal court. Thereafter, the State Treasurer will deposit the balance of assessments received as follows:

 14.04 percent for programs related to Probation, Parole and Pardon;

 13.89 percent to the Law Enforcement Training Council;

 0.36 percent to the Department of Public Safety;

 10.38 percent for the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;

 11.53 percent to the general fund;

 10.56 percent to the Office of Indigent Defense;

 0.89 percent to the Department of Mental Health;

 0.54 percent to the Office of the Attorney General;

 9.16 percent to the Department of Public Safety;

 1.31 percent to SLED;

 13.61 percent to the Governor's Task Force on Litter;

 13.61 percent to the Department of Juvenile Justice; and

 0.12 percent to the Office of the State Treasurer.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 16‑11‑700, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUMPING OF LITTER ON PRIVATE OR PUBLIC PROPERTY AND ITS PENALTIES, SO AS TO RESTRUCTURE THE OFFENSES TO ENSURE CIGARETTE BUTTS AND CIGARETTE COMPONENT LITTER AND DECEASED ANIMALS ARE INCLUDED IN THE PURVIEW OF THE STATUTE, AND TO RESTRUCTURE THE PENALTIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑11‑700 of the 1976 Code is amended to read:

“Section 16‑11‑700. (A) A person, from a vehicle or otherwise, may not dump, throw, drop, deposit, discard, or otherwise dispose of litter or other solid waste, as defined by Section 44‑96‑40~~(46)~~(2), (6), (32), (33), (43), (46), (73), and (74), and including cigarette butts and cigarette component litter, upon waters or public or private property ~~or waters~~ in the State for which he is not the legal owner or a person otherwise granted permission by the legal owner including, but not limited to, a highway, park, beach, campground, forest land, recreational area, trailer park, road, street, or alley except:

(1) on property designated by the State for the disposal of litter and other solid waste and the person is authorized to use the property for that purpose; or

(2) into a litter receptacle in a manner that the litter is prevented from being carried away or deposited by the elements upon a part of the private or public property or waters.

(B) Responsibility for the removal of litter from property or receptacles is upon the person convicted pursuant to this section of littering the property or receptacles. If there is no conviction for littering, the responsibility is upon the owner of the property.

(C)~~(1)~~ A person who violates the provisions of this section in an amount ~~less~~ not more than fifteen pounds ~~in weight or twenty‑seven cubic feet in volume~~, including cigarette butts and cigarette components, is guilty of a misdemeanor and, upon conviction, must be fined ~~two~~ not less than twenty‑five dollars and not more than one hundred dollars or imprisoned for not more than thirty days ~~for a first or second conviction, or fined five hundred dollars or imprisoned for not more than thirty days for a third or subsequent conviction~~. In addition to the fine or term of imprisonment, the court also must impose eight hours of litter‑gathering labor ~~for a first conviction, sixteen hours of litter‑gathering labor for a second conviction, and twenty‑four hours of litter‑gathering labor for a third or subsequent conviction,~~ or other form of ~~public~~ community service~~, under the supervision of the court, as the court may order because of physical or other incapacities~~.

~~(2)~~(D) The fine for a deposit of a collection of litter or garbage in an amount not more than fifteen pounds in an area or facility not intended for public deposit of litter or garbage is ~~one thousand dollars~~ not less than fifty dollars and not more than one hundred and fifty dollars. The provisions of this ~~item~~ subsection apply to a deposit of ~~litter or garbage, as defined in Section 44‑67‑30(4),~~ litter or solid waste, as defined by Section 44‑96‑40(2), (6), (32), (33), (43), (46), (73), and (74) including cigarette butts and cigarette components, in an area or facility not intended for public deposit of litter or garbage. This ~~item~~ subsection does not prohibit a private property owner from depositing litter or garbage as a property enhancement if the depositing does not violate applicable local or state health and safety regulations. In addition to a fine and for each offense pursuant to the provisions of this ~~item~~ subsection, the court also shall impose a minimum of ~~five~~ sixteen hours of litter‑gathering labor or other form of ~~public~~ community service~~, under the supervision of the court, as the court may order because of physical or other incapacities~~.

~~(3)~~(1) The court, instead of payment of the monetary fine imposed for a violation of this section, may direct the substitution of additional litter‑gathering labor or other form of ~~public~~ community service~~, under the supervision of the court, as it may order because of physical or other incapacities not to exceed one hour for each five dollars of fine imposed~~.

~~(4)~~(2) In addition to other punishment authorized by this section, in the discretion of the court in which conviction is obtained, the person may be directed by the judge to pick up and remove from any public place or any private property, with prior permission of the legal owner of the property upon which it is established by competent evidence that the person has deposited litter, all litter deposited on the place or property by any person before the date of execution of sentence.

~~(D)~~(E) A person who violates the provisions of this section in an amount exceeding fifteen pounds ~~in weight or twenty‑seven cubic feet in volume~~, but not exceeding five hundred pounds ~~or one hundred cubic feet,~~ on any public or private property, any portion of the road right of way, fresh‑water lake, river, canal or stream, or tidal or coastal waters of the State must be charged with illegal dumping of litter and is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than ~~ninety~~ thirty days. In addition, the court shall require the violator to ~~pick up litter~~ complete sixteen hours of litter‑gathering labor or perform other community service ~~commensurate with the offense committed, up to one hundred hours~~. For a second conviction, the person must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. In addition, the court shall require the violator to complete twenty‑four hours of litter‑gathering labor or other community service. For a third or subsequent conviction, the person must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. In addition, the court shall require the violator to complete thirty‑two hours of litter‑gathering labor or other community service.

~~(E)~~(F)(1) A person who violates the provisions of this section in an amount exceeding five hundred pounds ~~in weight or one hundred cubic feet in volume~~ is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned not more than one year, or both. In addition, the court may order the violator to:

(a) remove or render harmless the litter that he dumped in violation of this subsection;

(b) repair or restore property damaged by, or pay damages for damage arising out of, his dumping of litter in violation of this subsection; or

(c) perform community ~~public~~ service relating to the removal of litter dumped in violation of this subsection or relating to the restoration of an area polluted by litter dumped in violation of this subsection.

(2) A court may enjoin a violation of this subsection.

(3) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than five hundred pounds ~~in weight or more than one hundred cubic feet in volume~~ of litter in violation of this subsection is declared contraband and is subject to seizure and summary forfeiture to the State.

(4) If a person sustains damages in connection with a violation of this subsection that gives rise to a felony against the person or his property, a court, in a civil action for those damages, shall order the wrongdoer to pay the injured party threefold the actual damages or two hundred dollars, whichever amount is greater. In addition, the court shall order the wrongdoer to pay the injured party’s court costs and attorney’s fees.

(5) A fine imposed pursuant to this subsection must not be suspended, in whole or in part.

~~(F)~~(G)(1) When the penalty for a violation of this section includes litter‑gathering labor in addition to a fine or imprisonment, the litter‑gathering portion of the penalty is mandatory and must not be suspended; however, the court, upon the request of a person convicted of violating this section, may direct that the person pay an additional monetary penalty instead of the litter‑gathering portion of the penalty that must be equal to the amount of five dollars an hour of litter‑gathering labor. Probation must not be granted instead of the litter‑gathering requirement, except for a person’s physical or other incapacities.

(2) Funds collected pursuant to this subsection instead of the mandatory litter‑gathering labor must be remitted to the county or municipality where the littering violation took place. The money collected may be used for the litter‑gathering supervision.

~~(G)~~ ~~For purposes of the offenses established by this section, litter includes cigarettes and cigarette filters.~~

(H) A prior violation within the meaning of this section means only a violation of this section which occurred within a period of five years including and immediately preceding the date of the last violation.

(I) Magistrates and municipal courts have jurisdiction to try violations of subsections (A), (B), (C), ~~and~~ (D), (E), and (F) ~~of this section~~.

(J) For the purposes of subsections (E) and (F), illegal dumping is defined as disposing of more than fifteen pounds of any collection of solid waste, litter, or other materials defined in subsection (A) and including discarded, deceased animals or deceased animal parts which create a hazard to the public health and welfare, but not defined as a careless, scattered littering of smaller items.”

(K)(1) Nothing in this section shall prohibit the authority of a local government to enforce ordinances relating to the upkeep of property pursuant to Section 4‑9‑25 and Section 5‑7‑80.

(2) If a conflict occurs between this Section and the Solid Waste Policy and Management Act as contained in Chapter 96, Title 44, the latter controls.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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