



**House
Legislative
Analysis
Section**

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REGULATE MEDICAL WASTE DISPOSAL

House Bill 4136 as enrolled
Sponsor: Rep. Teola P. Hunter

House Bill 4137 as enrolled
Sponsor: Rep. James A. Kosteva

House Bill 4142 as enrolled
Sponsor: Rep. Michael J. Bennane

House Committee: Public Health
Senate Committee: Health Policy

Second Analysis (5-4-90)

THE APPARENT PROBLEM:

The issue of storing, treating, and disposing of medical waste became a state and national issue last year because of incidents in Michigan and in other northeastern states where medical waste washed up on beaches. In Oceana and Mason counties, hypodermic syringes and other medical wastes washed up on the Lake Michigan shoreline and resulted in the temporary closing of some beaches. Used hypodermic needles were discovered on Lake Erie beaches in Cleveland, beaches in New York and New Jersey were closed due to medical debris (including syringes that contained HIV-infected blood), and in Indiana children were reported to have been found playing with HIV-contaminated waste from an alley dumpster.

While Michigan already has laws regulating solid and hazardous wastes, medical waste has been governed by a set of guidelines, based on the recommendations of the federal Centers for Disease Control and the National Institute for Health, established by the Department of Public Health (DPH). These guidelines, however, only apply to health facilities and laboratories, and compliance is voluntary at best. There are no guidelines which regulate medical waste generated in physicians' or dentists' offices, or other facilities such as funeral homes or psychiatric institutions, nor do the guidelines address the issue of transporting medical wastes, staff training, or other areas specifically recommended by the federal Environmental Protection Agency in its "Guidelines of Infectious Waste Management."

In April of this year, the DPH filed with the secretary of state emergency rules governing the management of medical waste. The rules were extended in October pending completion of work on the legislation proposed in the present package of bills.

THE CONTENT OF THE BILLS:

The bills are part of a package of House and Senate bills that would regulate the storage, transportation, and disposal of medical wastes in the state. The bills would amend the Public Health Code and other relevant laws (dealing with mental health facilities, solid waste disposal, incinerators, and funeral directors) that would be affected by the health code amendments. House Bill 4136, the main bill in the package, would regulate and set fees for private practice offices; House Bill 4137 would substantially increase penalties for violations of the water resources act;

and House Bill 4142 would require funeral directors to comply with the new requirements.

House Bill 4136 would amend the Public Health Code to create the Medical Waste Regulatory Act, adding a new part to the code ("Medical Waste") which would:

- require that certain private practice offices producing medical waste (the term is defined in Senate Bill 69) register with the Department of Public Health, pay three-year registration fees, have written medical waste management plans, and train their employees to handle medical waste;
- require the Departments of Natural Resources and Public Health to conduct investigations of suspected violations of the bill and report the results;
- create an interdepartmental medical waste advisory council in the Department of Public Health and a medical waste emergency response fund in the state treasury; and
- establish administrative fines for violations.

Private practice offices that produced medical waste and that were staffed with licensed physicians, dentists, podiatrists, veterinarians or certified nurse practitioners or nurse midwives would be required to register under the bill. The three-year registration fee for offices with fewer than four licensed practitioners would be \$50; for offices with four or more licensed practitioners, \$20 for each licensee (with a maximum fee of \$80). These offices would have to have a written medical waste management plan containing certain information (specified in the bill) on medical waste generated, stored, decontaminated, or incinerated on site or transported to another site. When one of these offices transported medical wastes off site, it would be required to package the waste in specified ways. Offices would have to show their waste management plans to the Department of Public Health, upon request, or to an employee, upon receiving 24 hours' advance notice. Each office would be required to train its employees who handle medical waste in accordance with rules that the Department of Public Health would be required to make regarding training standards for such employees.

Basically, the Department of Public Health would be responsible for investigating suspected violations that occurred at health facilities or agencies (including incinerators owned and operated by such facilities and agencies), while the Department of Natural Resources

H.B.s 4136, 4137 & 4142 (5-4-90)

would be responsible for investigating all other suspected violations. If an investigation showed that a violation existed, either department could take appropriate measures to correct the violation and to protect the public health and the environment. Both departments would be required to report the results of investigations within 30 days after completing them.

The bill would create a five-member interdepartmental medical waste management advisory council (representing the Departments of Public Health, Natural Resources, State Police, Commerce, and the attorney general) in the DPH to collect data on medical waste reports and investigations carried out under the bill and to report annually on medical waste management under the bill.

The bill also would create a medical waste emergency response fund in the state treasury to receive money collected for registration fees and administrative fines under the bill, capping at 80 percent the amount of the fund that the DPH could use for implementing the bill. The balance would be used by the DNR for response activities necessitated by the release of medical waste into the environment.

Administrative fines of up to \$2,500 per violation (and up to \$1,000 for each day the violation continued) could be levied for violations of the bill. (The department could postpone levying a fine for up to 45 days or until the violation was corrected, whichever occurred first.) Fines for failing to register with the DPH or to have a medical waste management plan available for inspection as required would be \$500.

The bill would take effect 90 days after it was enacted, and is tie-barred to Senate Bill 69, which would add certain sections to the new part of the code (including definitions, fees for facilities, and requirements for the storage, decontamination, and disposal of medical waste by "producing facilities.")

House Bill 4137 (MCL 323.2 et al.) would amend the water resources commission act to:

- prohibit the unauthorized discharge of any medical waste into state waters,
- increase certain of the civil fines for violations of the act,
- change intentional violations from misdemeanors to felonies,
- add minimum fines and prison sentences to the penalties,
- add substantial new mandatory minimum and maximum fines for defendants found to be civilly or criminally liable for "substantial endangerment" of the public health, safety, or welfare,
- rewrite sections of the act pertaining to action that the DNR may take against suspected polluters and recourse available to those affected by a departmental order of abatement or permit action, and
- add new provisions for those seeking new or increased use of state waters for sewage or waste disposal.

Presently, the act prohibits the discharge into state waters of anything which might hurt the public health, other uses (domestic, commercial, industrial, agricultural, or recreational) of those waters, riparian lands, and plants or animals (both domestic and wild, including fish and game animals). The act specifically mentions the discharge of raw human sewage, saying that any unauthorized discharge of such sewage is to be considered prima facie evidence of a violation of the act. The bill would add that unauthorized discharge of medical waste also would be considered prima facie evidence of a violation of the act.

Currently, the Water Resources Commission can ask the attorney general to seek a court injunction against violations of the act and courts, in addition to any other relief granted, may impose a civil fine of up to \$10,000 a day for each day of the violation. Violations of the act (including unauthorized discharges, falsification of permit applications or required reports, or tampering with monitors or records) are misdemeanors punishable by a criminal fine of not less than \$2,500 and not more than \$25,000 for each violation. In addition, the court may impose a fine of up to \$25,000 for each day of an unauthorized discharge (up to \$50,000 a day for repeat offenders) and may put the offender on probation. The bill would:

- require civil fines of not less than \$2,500 for each violation (and up to \$25,000 for each day of a violation),
- let courts award reasonable attorney fees and costs,
- make intentional violations felonies,
- require that repeat offenders be fined at least \$25,000 per day,
- allow courts to imprison violators for up to two years,
- require that all fines or awards be payable to the state general fund and constitute a lien on any property owned by the defendant,
- allow the state to collect fines or awards by withholding income tax refunds,
- create civil and criminal liability for "substantial endangerment to public health, safety, or welfare," with mandatory minimum fines (at least \$500,000 and not more than \$5 million, in civil cases, and at least \$1 million in criminal cases) and 5 years' imprisonment in criminal cases.

Someone would be civilly or criminally liable for substantially endangering the public health, safety, or welfare if he or she "knowingly or recklessly" acted in a way that could cause death or serious bodily injury and if he or she either (a) actually believed or understood that his or her actions posed a substantial danger of death or serious bodily injury or (b) "acted in gross disregard of care which any reasonable person should observe in similar circumstances."

The bill also would amend the section of the act governing waste discharge permits. Presently, if the terms of a permit are violated, the Water Resources Commission may revoke the permit or allow time for the permit holder to comply with the permit. If the commission revokes a permit and the permit holder corrects the violation, the commission must reissue the permit. The bill would allow the commission to modify or suspend a permit (in addition to revoking it), and would allow the commission to decide whether or not to restore a permit revoked because of violations. (Someone whose permit had been revoked also could reapply for a new permit.)

Currently, if the commission believes that some one is polluting state waters (or is about to do so), it may notify the individual, propose how to correct the problem, and set a hearing date. The act also specifies actions that the defendant may take in such cases. The bill would transfer pollution decisions (and, in general, other regulatory decisions) to the Department of Natural Resources, which, after notifying the alleged polluter, could then either enter an order requiring abatement of the pollution or refer the matter to the attorney general for legal action. Someone who had been ordered to correct a pollution problem or who had had some action taken on an existing permit (reissuance, modification, suspension, or revocation) could respond (as at present) by filing a sworn petition with the

department (instead of the commission) and ask for a contested case hearing under the Administrative Procedures Act.

Finally, the bill would rewrite the section of the act regarding applications for new or increased use of state waters for sewage or other waste disposal:

- increasing from the present 60 days to a proposed 180 days the period of time within which the commission would have to grant or deny a permit,
- allowing not only the holder of the proposed permit to appeal the commission's decision but also other people to ask for a contested case hearing on the matter, and
- increasing the amount of time in which appeal of the commission's permit decision would be allowed (from the present 15 days to a proposed 60 days).

House Bill 4142 (MCL 339.1810) would amend the Occupational Code to require funeral directors to comply with the requirements of the medical waste part of the Public Health Code and to train employees (both licensed and nonlicensed) in the handling of medical wastes in accordance with rules to be made by the Department of Licensing and Regulation (the department, in consultation with the Department of Public Health, would be required to set, by rule, training standards for funeral home employees who handled medical waste).

BACKGROUND INFORMATION:

Senate Bill 69, which is the other main bill in the package, would add sections to the new "Medical Waste" part of the Public Health Code created by House Bill 4136, as well as amending other parts of the code to require health facilities and agencies (including private practice offices) to comply with the new part of the code. It would:

- define terms used in the new part of the code (including definitions of "medical waste," "infectious agent," and "pathological waste"),
- set registration fees for facilities producing medical wastes (\$150 for clinical laboratories and for hospitals with 150 or more beds, \$75 for other health facilities or agencies, including hospitals with fewer than 150 beds), and
- set requirements for the storage, decontamination, and disposal of medical waste both for facilities that do on-site incineration and those that do not.

The other Senate bills in the package would make the necessary changes in other laws to bring them into conformance with the main bills:

- Senate Bill 71 would amend the Mental Health Code (which regulates mental health facilities);
- Senate Bill 73 would amend the Solid Waste Management Act to prohibit disposal of medical wastes in landfills; and
- Senate Bill 74 would amend the Air Pollution Act to regulate medical waste incinerators.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 4136 would increase state revenues by an estimated \$300,000 over three years. (2-8-90) A May, 1989 cost estimate by the DPH estimated a total cost of nearly \$1 million if each medical waste generator were visited every year, and nearly \$600,000 if each site were visited every two years. The DPH would be allowed to use 80 percent of revenues generated for administrative costs; the remaining 20 percent would have to be used for environmental cleanup.

ARGUMENTS:

For:

The discovery of medical wastes on Michigan beaches — and the increased public awareness of the consequences of HIV infection — pointed up the lack of state regulation of the disposal of potentially lethal medical wastes and the need for state regulation of those who dispose of such wastes. The bills would place into law regulations for the handling, containment, and disposal of medical waste, providing a reasoned response to the medical waste problem.

Against:

Reportedly, the medical waste that washed up on Michigan shorelines could not be traced back to health professionals or facilities, and in fact most of the hypodermic needles found were apparently improperly disposed of by individuals (such as diabetic patients or illegal drug users) who would be unaffected by the bills. The bills would not get at the perceived problem — which itself was blown out of proportion because of the public's uninformed reaction to the fear of AIDS.

Response: Whether or not the incidents in Michigan last year would have been prevented by legislation such as this, they certainly did point out a gap in the state's regulation of an important — and potentially dangerous — type of waste. The bills would add an important piece to comprehensive efforts to deal with waste disposal problems generally.

For:

By increasing penalties and mandating certain minimum fines for violations of the water resources act, House Bill 4137 would deter water pollution through the improper discharge of wastes. Moreover, by allowing people other than permit applicants to contest the granting of a new or increased use of state waters for waste disposal, the bill also would allow increased involvement by concerned citizens in the disposal of waste into valuable state waters. And finally, by establishing as a violation the "substantial endangerment to public health, safety, or welfare," to be penalized by substantial fines and, in the case of criminal liability, imprisonment, the bill would create stiff sanctions for the most egregious cases of improper waste discharge.