

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 78 (as enrolled)

Sponsor: Senator Vern Ehlers

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Conservation, Recreation, and Environment

PUBLIC ACT 9 of 1990

Date Completed: 8-23-90

RECEIVED**OCT 24 1990****RATIONALE**

Traditionally, solid waste has been disposed of by burial in landfills but, for a number of reasons, landfills are now considered an unsatisfactory means for disposal of solid waste. For example, some landfills have been situated on geographically unsuitable sites or operated in ways that resulted in contamination of groundwater and other health hazards. Even well designed and well managed landfills may eventually leak, and pose a threat of environmental contamination. Although State law already includes some mechanisms--such as those under the Clean Michigan Fund Act and the Environmental Response Act--to address the problems of landfills, many believe that more long-range solutions are needed, and that existing fees charged for disposing of solid waste in landfills do not reflect the eventual costs of landfill closure and cleanup of environmental contamination. Thus, some have suggested that landfill owners be required to set aside funds for long-term maintenance and eventual closure.

CONTENT

The bill would amend the Solid Waste Management Act to do all of the following:

- Require a landfill owner or operator to establish a perpetual care fund for the closure, monitoring, and maintenance of the landfill.
- Require separate fund deposits for the disposal of coal or wood ash, wastewater treatment sludge and

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sediments from wood pulp or paper producing industries, foundry sand, and organic fruit and vegetable processing waste.

- Provide for the reduction and release of landfill owners' instruments of financial assurance.

The bill would take effect 120 days after its enactment.

Perpetual Care Fund

Under the bill, the owner or operator of a landfill would be required to establish a perpetual care fund to be used for closure, monitoring, and maintenance of the landfill. The fund also would be used for "response activity" necessitated by a "discharge" from the site of a substance that could become injurious to the public health, safety, welfare, or environment. ("Discharge" would include but not be limited to spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment that could injure the environment or the public health, safety, or welfare. "Response activity" would mean an activity needed to protect the public health, safety, welfare, and environment. The activity would include but not be limited to evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.) A perpetual care fund could be established as a trust or an escrow account.

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A landfill owner or operator would be required to deposit in the perpetual care fund 75 cents for every ton or portion of a ton of solid waste disposed of in the landfill. If the landfill were not equipped with a scale, the owner or operator would have to deposit in the fund 25 cents for each cubic yard or portion of a cubic yard of solid waste deposited.

The owner or operator of a landfill that was used for the disposal of the following materials would have to deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard that was disposed of in the landfill:

- Coal or wood ash that was disposed of in a landfill used only for the disposal of coal or wood ash or that was permanently segregated in the landfill. ("Coal or wood ash" refers to both inorganic and airborne residue from burning coal or wood, which is otherwise referred to as "bottom ash" and "fly ash".)
- Wastewater treatment sludge or sediments from wood pulp or paper producing industries that were disposed of in a landfill used only for the disposal of that sludge or sediments or that were permanently segregated in the landfill.
- Foundry sand that was approved by the Director of the Department of Natural Resources (DNR) for use as daily cover at an operating landfill, or foundry sand that was disposed of in a landfill used only for that purpose or that was permanently segregated in the landfill.
- Organic fruit and vegetable processing waste, for three years after the bill's effective date.

An owner or operator of a landfill used only for the mixture of two or more of those materials, or in which such a mixture was permanently segregated, would have to deposit into the fund 19 cents for each ton or cubic yard of those materials that was disposed of in the landfill.

An owner or operator of a landfill could contribute additional amounts into the perpetual care fund at his or her discretion. Deposits would not be required for materials that are regulated under Public Act 92 of 1970, which provides for the reclamation of land

subject to the mining of minerals.

The custodian of a fund would have to be either a bank or financial institution that had the authority to act as a custodian, with account operations that were regulated and examined by a Federal or State agency. The custodian would have to invest money in the perpetual care fund in time or demand deposits of the custodian or any other financial institution to the extent insured by an agency of the Federal government, in direct obligations of the Federal government, or this State, or in obligations whose principal and interest were guaranteed by the Federal government or this State, or in a common trust fund or registered mutual fund comprised only of perpetual care fund investments. Earnings would have to be credited to the perpetual care fund. The custodian would have to make an annual accounting to the DNR Director within 30 days after the end of the calendar year. The custodian could be compensated for reasonable fees and costs incurred.

No funds could be disbursed to the landfill owner or operator for purposes of the perpetual care fund except with the prior written approval of the DNR Director. The custodian would have to file all required tax returns for which the perpetual care fund was liable and could pay taxes owed by the fund, from its earnings, without the Director's approval. Upon the request of a landfill owner or operator for a disbursement of funds from the perpetual care fund, the Director would be required to grant written approval or issue a written denial within 60 days. A landfill owner or operator would have to give the custodian written notice of requests for disbursements as well as approvals or denials. Disbursement requests could not be submitted more than once per quarter-year. If a perpetual care fund's balance fell below the amount of financial assurance required by the Act (\$20,000 per acre and at least \$20,000 but not more than \$1 million), the DNR Director would not have to approve a disbursement from the fund and the closing, monitoring, maintenance, and response costs would have to be borne by the landfill operator and owner.

If an owner or operator refused or failed to conduct closure, monitoring, maintenance, and response activities as necessary to protect the

public health, safety, or welfare, or the environment, or failed to request a disbursement when necessary for that protection, the Director could require the disbursement and spend the money for closure, monitoring, maintenance, and response activities. The DNR could assess a perpetual care fund for associated administrative costs.

Thirty years after a landfill had been closed, 50% of the money in the landfill's perpetual care fund would have to be deposited in the Environmental Response Fund, which was created under the Environmental Response Act; and 50% would have to be returned to the owner unless a contract between the owner and operator provided otherwise. A landfill owner would have to notify the perpetual care fund's custodian of any change in ownership and the custodian would be required to keep records of ownership during the life of the fund.

Thirty years after a landfill's closure, the owner could petition the DNR Director for approval of final disbursement of the landfill's perpetual care fund. The Director would have to approve the request unless he or she determined that the owner had failed or refused to conduct necessary monitoring, maintenance, closure, or response activities. If the Director made such a determination, the disbursement request would have to be denied and the Director would have to notify the owner and custodian, in writing, of that determination and the reasons for it. The perpetual care fund's custodian would have to disburse all of the money remaining in the fund to the State's Environmental Response Fund 90 days after receiving the Director's notice, unless the owner appealed the determination in Circuit Court. If the owner did not seek the Director's approval for disbursement of the perpetual care fund, the Director, on his or her own initiative, could approve disbursement of either the entire amount to the Environmental Response Fund or 50% to that Fund and 50% to the landfill owner.

The bill specifies that its perpetual care fund provisions would not relieve a landfill owner or operator of any liability that he or she could have under the Solid Waste Management Act or as otherwise provided by law. The bill would not create a cause of action against a perpetual care fund's custodian other than for errors or

omissions related to the fund's investments, accountings, filings of tax returns, disbursements, and record maintenance.

Bond Reduction/Release

The Act prohibits issuance of a license to operate a disposal area unless the applicant has filed a bond to cover the cost of closure and post-closure monitoring and maintenance, and permits an applicant of a disposal area that is not a landfill, who has accomplished postclosure monitoring or maintenance, to request a 50% reduction. Under the bill, a person required to obtain a bond or letter of credit for a landfill could request a reduction in the bond upon reapplication for an operating license. (The Act requires renewal of such a license every two years.) The DNR Director would have to grant such a request unless there were sufficient grounds for denial provided in writing. The DNR Director would have to grant or deny a request within 60 days. If the Director granted a request, he or she would have to require financial assurance in an amount that would make the amount in the perpetual care fund, plus the amount of the reduced financial assurance, equal to the amount of the bond currently required by the Act plus 20% of that amount. The Director could release the financial assurance if the fund amount exceeded the amount of the original bond. Prior to closure, if money were disbursed from the perpetual care fund, the Director could require a corresponding increase in the amount of financial assurance.

MCL 299.403 et al.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

There would be the potential for decreased State expenditures for dump or landfill closures. The DNR estimates that it costs an average of \$243,000 to close a dump or landfill, which could be funded through Clean Michigan Fund or Solid Waste Bond proceeds. There could also be an estimated \$800,000 decrease in costs to the State for monitoring and maintaining landfill closures, if a portion of the landfill owners' perpetual care funds were required for this use by the DNR Director.

There would be indeterminate added costs to State and local government for increased payment per ton on government solid waste deposits.

Some increase in State revenue would be anticipated in the event a landfill owner refused or failed to request the disbursement of money from his or her perpetual care fund, when necessary to protect the public welfare or the environment and the Director required such a disbursement of funds for that protection or for monitoring and maintenance. There would also be indeterminate increased revenues to the State in deposits to the Environmental Response Fund 30 years after the landfills were closed. There would be a potential increase in revenue to local government of approximately \$3 million with the 25-cent per-ton surcharge.

ARGUMENTS

Supporting Argument

Although owners and operators charge for allowing solid waste to be deposited in their landfill, those charges reflect only the current operating costs of waste disposal. Neither the landfill owners and operators, nor anyone else, assess or are assessed the inevitable long-term costs that are inherent in the eventual closure and maintenance of the landfill. As a result, the State--and indirectly the people of the State--end up financing closure and postclosure activities, as well as any additional contamination cleanup. Under the bill, however, those who bury waste in landfills would be required to make deposits to a fund that would cover the true expense of using landfills. Also, it is hoped that consumer behavior would be modified to reduce this society's dependence on landfills, as increasing the cost of using landfills made more environmentally acceptable methods of solid waste disposal economically competitive.

Supporting Argument

While current law includes certain mechanisms to address solid waste disposal problems, those procedures typically focus only on existing situations, rather than on long-range solutions. Although there are other provisions in law for educational programs and various studies exploring alternatives to waste disposal, and for solid waste management grants that may cover alternative options such as recycling, those grants are dependent upon legislative

appropriations and their amounts may be considered negligible given the costs of waste disposal facilities. The Environmental Response Act targets cases of actual or threatened contamination and provides for action to remedy those situations, but not to prevent future health hazards. A concrete approach to assure the safe maintenance and closure of landfills in the future is lacking in State law. Senate Bill 78 would provide that mechanism by requiring landfill owners and operators to create and make deposits to a 30-year perpetual care fund. Also, by allowing a fund to be used for response activity necessitated by a discharge from the site, the bill would reduce the burden on the Environmental Response Fund.

Supporting Argument

It is appropriate to treat separately the disposal of fly ash, bottom ash, foundry sand, fruit and vegetable processing waste, and wood pulp water treatment sludge and sediments. These materials are not toxic and may be used for constructive purposes. Fly ash, for example, is used in highway paving, foundry sand may be used in building foundations, and food processing waste can be tilled into the soil.

Opposing Argument

If the bill is designed in part to modify consumer behavior, it should impose a charge at the beginning of the waste disposal system--that is, at the point of sale. For example, a deposit analogous to the bottle deposit could be imposed on plastic containers (which would keep them out of the waste stream in the first place), or a tax could be added to the sale of tires for their disposal or recycling.

Opposing Argument

It would not be fair to split up a perpetual care fund's balance after 30 years between the Environmental Response Fund and the landfill owner. Instead of receiving only half of the balance, the owner should get it all. It is the owner who would be liable for the landfill during its operation, after its closure, and any time in the future.

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