



**House
Legislative
Analysis
Section**

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GEN'L AMENDMENTS TO SOLID WASTE MGMT ACT

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House Bill 4110 (Substitute H-3)
First Analysis (5-13-87)

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Sponsor: Rep. Thomas Scott Mich. State Law Library
Committee: Conservation & Environment

THE APPARENT PROBLEM:

The Solid Waste Management Act (Public Act 641 of 1978) was enacted amid a growing awareness of the extent to which the state's groundwater had been contaminated by leachates from faulty landfills. The act attempts to ensure that solid waste is handled responsibly with a proper regard for environmental hazards by specifying criteria for disposal area construction and operation, requiring financial guarantees by disposal area operators to ensure that each facility is properly closed and monitored after closing, and providing various enforcement remedies.

Since 1978, the state's solid waste disposal problems have been exacerbated by difficulties in implementing and enforcing the act. Many of the act's provisions are vague or ambiguous and in need of clarification. There was delay in promulgating the rules for the act and they did not take effect until January 1982. Probably the greatest barrier to full implementation of the act has been court decisions generally holding that because of Proposal E of 1978, the state cannot require local units of government to comply with new requirements imposed by the act unless it reimburses them for the costs they otherwise would have to bear.

A decision in the Court of Claims added a new dimension to the problems presented by the application of Proposal E to the act. The court granted Livingston County's claim for reimbursement from the state for costs the county incurred in bringing its landfill up to Public Act 641 standards. While the state's appeal is still pending before the Supreme Court, the scale of potential state financial liability, should the Court of Claims decision be upheld, is such that many believe Public Act 641 urgently needs to be amended to ensure that the state does not end up paying for landfill improvements across the state.

Not only have there been problems in implementing the act in general, but additional difficulties have been created by the issues involved in constructing new landfills. There often is local opposition to landfill proposals because of strong concerns over the health hazards and nuisances a landfill can create; no one wants to live next to a landfill. In contrast, the main concerns in many sparsely populated areas are not environmental issues but rather the expenses presented by replacing the traditional open dumps with transfer stations and sanitary landfills.

Solid waste planners, while cognizant of the urgent need for additional landfill space, are also aware that more and safer landfills represent only a partial and short-term answer to what to do with the millions of tons of waste produced in the state's urban areas each year. It is important that as much recycling be done as possible, to conserve not only resources, but also scarce landfill space. Many people believe that over the longer term, modern incinerators are a safer and more efficient use of land than landfills. The prospect of building solid waste incinerators that would produce steam and electricity is especially attractive, but the construction of such "cogeneration" facilities demands a substantial financial commitment, and

successful operation requires a steady and assured supply of waste. Thus, relatively few localities have moved toward constructing solid waste incinerators.

It has been suggested that the act be amended to clarify and strengthen it, to encourage recycling and incineration, and to address various local concerns.

THE CONTENT OF THE BILL:

The Solid Waste Management Act, administered by the Department of Natural Resources (DNR), provides a comprehensive approach to solid waste management in the state. The bill would make numerous changes in the act, some of which are primarily technical. Other amendments proposed by the bill are more significant, and are discussed in detail below.

Waste Disposal

The bill would require that all solid waste would have to be disposed of at a disposal area licensed under the act unless state law or DNR rules permitted disposal of the waste at the site of generation. This requirement would apply to the state, local units of government, public and private agencies and corporations, and individuals.

The act specifies that a municipality or county must ensure that all solid waste is removed from the site of generation frequently enough to protect the public health, and that waste is delivered to licensed disposal areas unless the state permits the waste to be disposed of at the site where it was generated. The bill would specify that a municipality, county, regional planning agency, or the director of the DNR would have to provide these assurances through the solid waste management planning process.

Exemptions

Newly exempted from the definition of "solid waste," and thereby from regulation under the act, would be site- and source-separated materials, fly ash (or any other ash from coal combustion) which was put to certain uses in construction, materials approved for emergency disposal by the DNR director, material used for a purpose approved by the director, and sludges and ashes put to agricultural use according to a plan approved by the director. The director would be empowered to exempt from regulation under the act materials which he or she determined to be inert.

The act currently excludes from the definition of "solid waste transfer facility," and thereby from the definition of "disposal area," sites with containers with volumes of ten cubic yards or less, and sites with containers of 65 cubic yards or less which are used only for storage of solid waste generated on or near the site and incidental to the transportation of solid waste. The bill would delete this exemption, but would exempt certain small transfer stations from the construction permit and operating license requirements; such facilities would continue to have to comply with the act's operating requirements.

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A solid waste incinerator could opt to comply with construction permit and operating license requirements, but would not have to if it did not expose solid waste to the elements and had a permit issued under the Air Pollution Act (Public Act 348 of 1965).

Construction Permits and Operating Licenses

Generally, anyone wishing to construct and operate a solid waste disposal area would continue to have to obtain a construction permit and an operating license from the DNR.

The director would be prohibited from issuing a construction permit for a disposal area unless a local solid waste management plan had received final approval, and the proposed disposal area was consistent with it. (An equivalent provision exists in current law regarding issuance of operating licenses. In addition, the rules provide that as of January 6, 1984, no permit or license may be issued for a new facility unless an approved plan existed and the proposed facility was consistent with it.) However, a construction permit or operating license could be issued in the absence of an approved plan if the disposal area were designed to receive ashes from fossil fuels burned to generate electricity, and if both the agency preparing the local plan and the municipality which was to contain the disposal area consented.

Currently, an application for construction of a landfill within 10,000 feet of a runway of an airport licensed by the Aeronautics Commission must be reviewed by the Resource Recovery Commission, which then offers its recommendation to the director. Under the bill, such applications would instead be reviewed by the Aeronautics Commission. If the Aeronautics Commission found that the landfill would present a potential hazard to aircraft, the director could either recommend changes in the plans for the disposal area, or deny the application. A permit applicant would be given an opportunity to rebut an Aeronautics Commission finding of potential hazard to aircraft.

Landfill Bonds, Restrictive Covenant

To cover the costs of closure and postclosure monitoring, and maintenance of a disposal area, a license applicant must provide financial guarantees in the form of a surety bond, a cash bond, or a certificate of deposit; the bill would in addition allow an applicant to satisfy this financial requirement by filing some other suitable instrument or establishing a secured trust fund. At present, the amount of security required for a landfill is \$4,000 per acre, but the total amount cannot be less than \$10,000 or more than \$500,000. The bill would increase the amount of security required for a landfill to \$20,000 per acre; the minimum amount for the total security would also be raised to \$20,000, and the maximum would be raised to \$1,000,000.

If a cash bond is used, at least \$10,000 must be paid prior to licensure, with subsequent payments of \$1,000 every six months until the required \$4,000 per acre is attained. Under the bill, the minimum advance payment would be raised to \$20,000, with subsequent six-month payments to be determined by the director.

The time period which a bond must cover would be increased from five to fifteen years after the landfill or any approved part of it was completed. After closure is completed to the director's satisfaction, a landfill licensee can request a 20 percent reduction in the bond each year; the bill would lower the allowable annual reduction to 6.6 percent per year.

At the time a landfill is licensed, a restrictive covenant is executed which identifies the property as a landfill and

prohibits disturbance of the site without authorization from the director for a minimum of 15 years after the landfill was completed. The bill would increase this term to 50 years.

Twenty-year Management Plans

Counties are required to develop and submit to the director 20-year solid waste management plans, and plans must be reviewed and updated every five years. (While the plans are commonly called "county plans," it should be noted that municipalities and/or counties may join together in several ways to form planning areas and develop plans.) Plans are developed with the assistance of planning committees, representing various government and private interests, appointed under the act. The bill would increase the number of members on a planning committee from 13 to 14 by adding one member representing industrial waste generators.

Each plan must contain, among other things, "enforceable mechanisms" for implementing the plan, including identification of the municipalities responsible for enforcement. Enforceable mechanisms would include such things as contracts, intergovernmental agreements, laws, ordinances, rules, and regulations. Under the bill, if a solid waste disposal area located in one county served the disposal needs of another county, the disposal area would have to be identified in the plans of both counties as accepting the out-of-county solid waste.

The bill would establish procedures for updates and amendments of plans paralleling the procedures for initial plans. The director could prepare an updated plan if reasonable progress was not being made by the agency which prepared the initial plan. In cases where the director had prepared the initial plan, the county would be given an opportunity to prepare the updated plan. If the county failed to proceed, the municipalities involved would have a chance to prepare the update.

Enforcement

While the act currently allows the director to revoke a permit or license following notice and hearing, the bill would further allow the suspension or restriction of a permit or license. A permit or license could be summarily suspended by the director if a violation occurred which presented an imminent risk of injury to public health or the environment; determination of whether the violation threatened public health would be made by the director of public health. Both the director and local health officers are empowered to issue a cease and desist order upon discovering a violation of the act; the bill would further allow a schedule of closure and remedial actions to be imposed. Persons (the term would include local and state governments) would be specifically required to comply with the act, its rules, approved local plans, and permits and licenses.

In addition to the injunctive relief currently available under the act, the bill would allow a court to impose upon any violator a civil fine of up to \$10,000 and to order a violator to pay to the state the cost of restoring a site plus the surveillance and enforcement costs deriving from the violation.

Resource Recovery

The director of the DNR would be required to develop a strategy to encourage resource recovery and the establishment of waste-to-energy facilities, and report to the legislature on the details of the strategy within one year of the effective date of the bill. The report would recommend public and private sector incentives and suggest potential regulatory relief to remove constraints on the siting of waste-to-energy and resource recovery facilities. It would also include specific recommendations

for necessary legislation to implement the strategy. The strategy and report would be prepared with the goal of reducing land disposal to unusable residuals by the year 2005.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill's proposals constitute an integrated approach to solving the problems associated with the Solid Waste Management Act, including the need to implement and effectively enforce the act, promote landfill alternatives, and encourage local involvement. Several provisions are aimed at promoting resource recovery. The bill would ease burdens on existing disposal areas and reduce future dependency on landfills through provisions promoting recycling, exempting inert materials from the act, and encouraging the prompt development of solid waste incinerators. Strengthened provisions for enforcement and financial accountability would offer better protection for the public health and the environment without restricting legitimate disposal operations. The enactment of many needed clarifications would expedite implementation and facilitate enforcement of the act. Enforcement efforts would be further aided by supplementing criminal penalties with civil and administrative remedies, which can be more effective and easier to sustain.

Against:

Excusing solid waste incinerators that comply with the Air Pollution Act from Public Act 641's construction and operating license requirements may mean that the incinerators could be built and operated even if they conflicted with the county plan, and thereby interfered with sound solid waste planning. An incinerator established outside of the planning process could jeopardize facilities built under a plan. While such incinerators apparently would be subject to local zoning restrictions, it is feared that local ordinances may fail to provide for the contingency of solid waste incinerators being built without regulation under Public Act 641 and without regard to existing solid waste management plans.

Against:

A few years ago, courts ruling on the application of Proposal E to Public Act 641 generally limited themselves to declaring that certain of the act's provisions constituted new requirements in excess of Public Act 641's predecessor statute, and that if the state wanted to enforce those requirements, including enforcement by way of license denial, the state must bear the increased costs presented by the action. While the DNR believes that courts have erred on this matter, a new urgency has been lent to the problem by a Court of Claims decision ordering the state to reimburse a county for the costs it incurred in upgrading its landfill to Public Act 641 standards. If this decision is upheld by the Supreme Court, there is the potential for the state to be held liable for the astronomical cost of bringing all the disposal areas in the state up to standard. To prevent this from occurring, the bill should prohibit municipalities and counties from owning or operating disposal areas unless they agreed to meet Public Act 641 requirements under a local ordinance or resolution. Enforcement of the requirements thus would be enforcement of local, rather than state, requirements, and therefore would not be

subject to the restrictions of Proposal E.

Response: Court decisions applying the provisions of Proposal E to the act have emphasized that in requiring a municipality or county to ensure that waste be removed from the site of generation frequently enough to protect the public health and that it be delivered to licensed disposal areas, the act imposed new requirements on local governments. The state, if it wanted to enforce those requirements, was obligated to pay increased costs resulting from them. Because of the attention given to these local responsibilities by the courts, any change in the language is subject to much scrutiny. Therefore, instead of inserting language to clear up these problems it is better to wait for the Supreme Court decision concerning the provisions.

Against:

The state needs additional safe landfills and will continue to need them well into the future, yet the bill proposes to, as of the year 2005, prohibit most landfilling of waste that can be processed to produce materials or energy. The year 2005 is only 18 years away—too short a period to shift the state from its current dependence on landfills to solid waste recycling plants and cogeneration incinerators, even if the shift need only be made in more populous counties.

Response: The provision is an expression of strong concerns over continued reliance on landfills and serves as a spur to develop landfill alternatives. If, as the deadline approaches, it becomes obvious that the requirement will be impossible to meet, the legislature can always postpone the deadline or otherwise modify the provision.

POSITIONS:

The Department of Natural Resources supports the bill. (5-6-87)

The Michigan Municipal League supports the bill. (5-12-87).

The Michigan Association of Counties supports the bill. (5-6-87)

The Michigan Township Association supports the bill. (5-12-87)

The Michigan Environmental Council supports the bill. (5-6-87)

The National Solid Wastes Management Association supports the bill. 5-6-87)