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Senate Bill 48 (Substitute S-6 as passed by the Senate)**Sponsor: Senator Vern Ehlers****Committee: Natural Resources and Environmental Affairs****Date Completed: 7-6-88*****RATIONALE***

Traditionally, solid waste has been disposed of by burial in landfills but, for a number of reasons, landfills are considered an unsatisfactory solution to the problems of solid waste disposal. 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 run 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 closure and cleaning up environmental contamination. Thus, it has been suggested that landfill owners be required to set aside funds for the landfills' long-term maintenance and eventual closure.

CONTENT

The bill would amend the Solid Waste Management Act to:

- Require a landfill owner or operator to establish a perpetual care trust fund for the closure, monitoring, and maintenance of the landfill.
- Require separate trust fund deposits for the disposal of fly ash, bottom ash, wastewater treatment sludge from wood pulp or paper producing industries, foundry sand, and organic fruit and vegetable processing waste.
- Provide for the distribution of a trust fund 30 years after the landfill closed.
- Provide for the reduction and release of landfill operating bonds.

The bill would take effect after 120 days following its enactment.

Perpetual Care Trust Fund

Under the bill, the owner or operator of a landfill would be required to establish a perpetual care trust fund to be used exclusively for closure, monitoring, and maintenance of the landfill. The fund also would be used for "response activity" necessitated by a "discharge" of chemicals or other materials from the site 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 into the environment a chemical or other material 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 landfill owner or operator would be required to deposit in the perpetual care trust fund 75 cents for every ton or portion of a ton of solid waste disposed of in the landfill. If the disposal area 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 in the area.

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 portion of a ton that was disposed of in the landfill:

- Fly ash or bottom ash that was disposed of in a landfill that was used only for the disposal of fly ash and bottom ash or that was permanently segregated in the landfill. ("Fly ash" and "bottom ash" refer to residue of burning coal.)
- Wastewater treatment sludge from wood pulp or paper producing industries that was disposed of in a landfill used only for the disposal of that sludge or that was permanently segregated in the landfill.
- Foundry sand that was designated as inert by the Director of the Department of Natural Resources (DNR) and was used for daily cover at an operating landfill or capping of a closed 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.

These requirements would not apply to materials that are regulated under Public Act 92 of 1970, which provides for the reclamation of land subject to the mining of minerals.

The trustee of the fund would have to be either a bank or financial institution that had the authority to act as a trustee, with trust operations that were regulated and examined by a Federal or State agency. The trustee would have to invest money in the perpetual care trust fund in time or demand deposits of the trustee 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 unconditionally guaranteed by the Federal government or this State. The trustee would have to make an annual accounting to the DNR Director.

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OVER

No funds could be disbursed by the trustee to the landfill owner or operator for purposes of the trust fund except with the written approval of the DNR Director. Upon the request of a landfill owner or operator for a disbursement of funds from the trust fund, the Director would be required to grant written approval or issue a written denial within 60 days. 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.

Thirty years after a landfill had been closed, any money in the trust fund would have to be distributed as follows:

- 50% would be deposited in the Environmental Response Fund created under the Environmental Response Act.
- 50% would be returned to the owner of the disposal area unless a contract between the owner and the operator provided otherwise. If there had been more than one owner during the time the fund existed, this money would have to be disbursed in proportion to each owner's contribution to the fund.

The bill specifies that its trust fund provisions would not relieve a landfill owner or operator of any liability that he or she could have under the Act or as otherwise provided by law.

Bond Reduction/Release

The Act currently 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; allows a landfill applicant annually to request a 6.6% reduction in the bond after closure; and permits any other applicant to request a 50% reduction. Under the bill, an applicant of a disposal area that was not a landfill could request a 50% reduction. A person required to obtain a bond for a landfill could annually request a reduction in the bond, and the DNR Director would have to grant or deny a request within 60 days. If he or she granted a request, the Director would have to require a new bond in an amount that would make the amount in the perpetual trust fund, plus the amount of the reduced bond, equal the amount of the bond currently required plus 20% of that amount. The Director could release the bond if the trust fund amount exceeded the amount of the original bond. Prior to closure, if money were disbursed from the trust fund, the Director could require a bond or a corresponding increase in the bond required to comply with the amount of the new bond needed under this provision.

BACKGROUND

Landfill Closure

The Department of Natural Resources reports that Michigan's strategy for dealing with its solid waste problems is 1) to reduce the dependence on landfills by raising the amount of solid waste that is disposed of through waste reduction/reuse, recycling, composting, or processing in waste-to-energy facilities, and 2) to eliminate the disposal of solid waste in landfills that are unlicensed and do not conform to the environmental protection requirements of the Solid Waste Management Act. According to a DNR report of May 1987, Michigan had 91 operating unlicensed landfills in 1986, and through the Clean Michigan Fund, 15 of these were given grants

totaling \$2,400,000 to accomplish closure. As of May 1987, 76 unlicensed landfills continued to operate, and some 10 closed landfills required reclosure to comply with closure standards of the Solid Waste Management Act. It was estimated (in 1987 dollars) that the cost of closing or reclosing these unlicensed landfills would be approximately \$39,000,000, with the State's share, on a 25% local match, being approximately \$29,000,000. For 1987, the DNR had received grant applications for landfill closure requesting \$8,100,000 of State funds.

Often, a transfer station must be built to facilitate the closure of an unlicensed landfill. The Department reported that in the first year of the Fund's operation, the Clean Michigan Fund provided \$1,900,000 in grants for the construction of 21 transfer stations. As of May 1987, the DNR had received 36 applications requesting \$6,900,000 for Clean Michigan Fund grants to build additional transfer stations, and the Department estimated that some 70 transfer stations still needed to be constructed at a total cost to the State of approximately \$11,000,000.

Clean Michigan Fund

Public Act 249 of 1986 enacted the Clean Michigan Fund Act and created the Clean Michigan Fund. The Fund consists of appropriations from the State's General Fund, plus any donations, and is administered by the Natural Resources Commission. The Act provides for grants to municipalities as well as private entities for the costs of constructing transfer stations. In addition to other criteria, a grant applicant must demonstrate that a proposed station will replace a sanitary landfill or open dump that was closed according to standards of the Solid Waste Management Act. Grants also may be awarded to municipalities and private entities to fund recycling and composting programs, waste-to-energy (usually incineration) programs, and recycling and composting programs. Grants may be awarded only for projects in a county that has an approved solid waste management program.

The Act also provides for a number of studies, including those on waste stream assessments, market development research for recycled materials, recycling and compost feasibility, and waste-to-energy feasibility. In addition, the Act provides for a resource recovery educational program and household hazardous waste disposal education.

Environmental Response Act

Public Act 307 of 1982 enacted Michigan's Environmental Response Act and created the Environmental Response Fund (which is analogous to the Federal Superfund). The Act requires the Governor to identify sites in the State for assigning priority for evaluation and response actions; annually to give the Legislature lists in order of relative risk of all known sites requiring further evaluation and any interim response activity, and of sites where response activities are to be undertaken by the State; and to recommend a level of funding to provide for response activities at those sites. "Response activity" refers to an activity necessary to protect the public health, safety, and welfare, and the environment, and includes evaluation, clean-up, removal, containment, isolation, treatment, monitoring, replacement of water supplies, and temporary relocation of people. Response activity also includes reimbursement of the expenses of replacing a potable water supply that is or is threatened to be contaminated by a hazardous substance.

MCL 299.419 et al.

FISCAL IMPACT

The bill would have the following fiscal impact:

- There would be indeterminable costs, because of the required 75 cents per ton deposit to the Perpetual Care Trust Fund, to the State for depositing solid waste in landfills. The amount of solid waste deposited by State agencies and institutions is not known.
- There would be indeterminable costs, because of the required 75 cents per ton deposit to the Perpetual Care Trust Fund, to units of local government for depositing solid waste in landfills. The amount of solid waste deposited by units of local government is not known.
- Because the costs for monitoring and maintaining landfills would be paid from Perpetual Care Trust Funds, there would be a savings to the State of \$800,000.
- The State's share of the Perpetual Care Trust Funds from one year of deposits when the funds were closed out (at least 30 years after the landfills were closed) would be \$573,750, plus investment income.
- There would be indeterminate revenues to the State from the Perpetual Care Trust Fund created by the 7.5 cents/ton for fly ash, bottom ash and certain uncontaminated listed materials when the funds were closed out (at least 30 years after the landfills were closed). An estimate of tonnage of these materials to be deposited in landfills is not available.

The fiscal impacts were estimated as follows:

- The required deposits would be passed on to those entities depositing in landfills.
- Assume 12,000,000 tons of solid waste are generated in the State each year.
- Assume 1,800,000 tons of solid waste are disposed in unlicensed landfills, consumed for energy, or recycled.
- Assume the remaining 10,200,000 tons are disposed of in licensed landfills pursuant to this Act.
- Assume the owner or operator deposits amounts on a per-ton basis as the amount of cubic yards is not known. However, the revenue obtained by charging 25 cents per cubic yard seems to equate to the 75 cents per ton. Total deposits by owners and operators would be \$7,650,000 (10,200,000 tons x 75 cents).
- Assuming 90% of deposits were used for maintenance and monitoring ($\$7,650,000 \times .90 = \$6,885,000$), \$765,000 would remain in the fund. This would create a savings to the State which is currently spending about \$800,000 to monitor landfills.
- Assume income from a trust fund would be offset by the cost of administration of the trust; however, income should exceed costs.
- Based on one year of deposits, at the end of 30 years after closure:

— The Environmental Response Fund would receive 50% of \$765,000, or \$382,500.

— The owner or operator would receive 50% of \$765,000, or \$382,500 if the owner or operator could be found. If owner or operator or assignee could not be found, then that amount presumably would escheat to the State.

- Assuming that the owner or operator would pass the added cost on to the depositors, then the added cost would be passed on to State and local governments. Because the amount of solid waste for State and local governments is not known, this cost is indeterminate.

ARGUMENTS

Supporting Argument

Although landfill 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 post-closure activities, as well as any additional contamination clean-up. Under the bill, however, those who bury waste in landfills would be required to make deposits to a trust 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 the Clean Michigan Fund Act does provide for educational programs and various studies exploring alternative 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 obviously targets cases of actual or threatened contamination and provides for action to remedy those situations, not to prevent future health hazards. While both of those laws have their place, what is also needed is a concrete approach to assure the safe maintenance and closure of landfills in the future. Senate Bill 48 would provide that mechanism by requiring landfill owners and operators to create and make deposits to a 30-year perpetual trust fund. Also, by allowing a trust 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. 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 foundations, and food processing waste can be tilled into the earth.

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 trust 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.

Opposing Argument

As the bill was reported from the Senate Natural Resources and Environmental Affairs Committee, it would have imposed a \$2-per-ton surcharge on persons who deposited solid waste. This revenue would have paid the debt service on bonds issued under the Environmental Protection Bond Authorization Act (proposed by Senate Bill 651), if the bond issue were approved by the voters. Without the surcharge, there would be no specific revenue source to repay the bonds, which would result in a strain on the State's General Fund.

Response: The proposed surcharge received many criticisms. Some complained that it amounted to a tax on a municipality's public health system, and that municipalities already providing a trash collection service would be subsidizing others that have not accepted that responsibility. Others objected to the surcharge being deposited in the Clean Michigan Fund if the bond issue did not pass, and claimed that that Fund does not treat municipalities and the private waste industry equally.

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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.