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House Bill 4110 (Substitute S-1)**Sponsor: Representative Thomas Scott****House Committee: Conservation and Environment****Senate Committee: Natural Resources and Environmental Affairs****Date Completed: 6-4-87****RATIONALE**

The Solid Waste Management Act was enacted in 1978 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.

Reportedly, 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 considered by some to be vague or ambiguous. There was delay in promulgating the rules for the Act and they did not take effect until January 1982. Some say the greatest barrier to full implementation of the Act has been court decisions generally holding that because of Ballot Proposal E of 1978 (the "Headlee amendment" to the State Constitution), the State cannot require local units of government to comply with new requirements imposed by law unless the State reimburses local units for the costs they otherwise would have to bear. This contention is supported by a decision of the Court of Claims that 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 pending before the Supreme Court, 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.

Further, in addition to problems in implementing the Act in general, difficulties apparently have arisen involving the construction of 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, believe 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 considered 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 to many, 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.

CONTENT

The bill would amend the Solid Waste Management Act and do the following:

- Allow for waste disposal, under certain circumstances, at the site of waste generation.
- Remove from the definition of "solid waste" certain site and source separated materials, including ashes and sludges that were put to certain uses.
- Provide that a permit could not be issued for construction of a waste disposal area unless it were consistent with a local solid waste management plan.
- Call for landfill site selection to be reviewed by the Aeronautics Commission, when near an airfield.
- Increase the amount of security that a landfill applicant must provide to cover costs of closure, maintenance and post closure monitoring of a disposal area.
- Provide for increased responsibility of the Director of the Department of Natural Resources (DNR) to suspend or restrict a permit or license for a disposal area and to develop a strategy to encourage resource recovery.

Waste Disposal

The bill would require that all solid waste be disposed of at a disposal area licensed under the Act unless State law or DNR rules would permit disposal of the waste at the site of generation. This requirement would apply to an individual, sole proprietorship, partnership, association, public or private corporation, the State or an agency or department of the State, a municipality or a county.

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 to be 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 require a municipality, county, regional planning agency, or the director of the DNR to provide these assurances through the solid waste management planning process.

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Exemptions

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 or coal in combination with wood combustion) that 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 that 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 a volume of 10 cubic yards or less, and sites with containers of 65 cubic yards or less that 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.

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.) A construction permit or operating license could be issued in the absence of an approved plan, however, 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 that 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 have to 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 is required to provide financial guarantees in the form of a surety bond, a cash bond, or a certificate of deposit. At present, the amount of security required for a landfill is \$4,000 per acre, but the total amount may not 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 also would 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 30 years after the landfill or any approved part of it is completed. After closure is completed to the director's satisfaction, a landfill licensee can request a 20% reduction in the bond each year; the bill would lower the allowable annual reduction to 6.6% per year.

At the time a landfill is licensed, a restrictive covenant is executed that 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 were not being made by the agency that prepared the initial plan. In cases in which 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 in the event of a violation that 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.

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 also would 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.

MCL 299.404 et al.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

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 dependence 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.

Opposing Argument

Excusing solid waste incinerators that comply with the Air Pollution Act from Public Act 641's construction and operating license requirements could 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 could fail to provide for the possible construction of solid waste incinerators without regulation under Public Act 641 and without regard to existing solid waste management plans.

Opposing Argument

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 constitute new requirements in excess of Public Act 641's predecessor statute, and that if the State wants 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 would 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 wants to enforce those requirements, is 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.

Opposing Argument

The State needs additional safe landfills and will continue to need them well into the future, yet the bill proposes, as of the year 2005, to 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 had to only be made in more populous counties.

Response: The provision is an expression of strong concerns over continued reliance on landfills and would serve as a spur to develop landfill alternatives. If, as the deadline approached, it became obvious that the requirement would be impossible to meet, the Legislature could always postpone the deadline or otherwise modify the provision.

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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.