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House Bill 4519 (as reported with amendments)**Sponsor: Representative Gordon R. Sparks****House Committee: Conservation and Environment****Senate Committee: Natural Resources and Environmental Affairs****Date Completed: 12-7-87*****RATIONALE***

The Hazardous Waste Management Act regulates the handling, storage and disposal of hazardous waste. Under the Act, nine-member site review boards review and grant or deny applications for the construction of hazardous waste disposal sites. Some feel that experience with the site review process since the Act was passed in 1979 has demonstrated several problems and that a redefining of the selection process is needed to add technical expertise to the process and to improve the negotiation of conflicts to ensure that local issues were adequately addressed under the Act.

CONTENT

The bill would amend the Hazardous Waste Management Act to change the makeup of the Hazardous Waste Site Review Boards, and the process by which permits for the construction of hazardous waste storage facilities are granted. The bill would also create a revolving fund within the Department of Treasury to cover the expenses of the Hazardous Waste Site Review Boards.

The bill specifies that it could not be construed to permit the siting of a facility within Ontonagon and Genesee Counties.

Site Review Boards

Currently, the Hazardous Waste Management Act provides for the establishment of nine-member site review boards which review and grant (or deny) approval for each site construction permit application. A board is made up of one representative each from the Departments of Public Health, State Police, and Natural Resources; two public members — one geologist and one chemist — appointed by the Governor; and two members appointed by the municipality, and two appointed by the county board of commissioners, of the municipality and county in which a facility is to be located.

The bill would amend the Act to change the make-up of the boards' voting members and add one nonvoting chairperson. One member of a site review board would be appointed by the governing body of the municipality in which the treatment, storage, or disposal facility was primarily proposed to be located and one member would have to be appointed by the County Board of Commissioners. An attorney, appointed by the Governor with the advice and consent of the Senate, would serve as a nonvoting chairperson. The chairperson would have to have had experience in conducting formal meetings where sworn testimony was received. More than one chairperson could be appointed by the Governor; however, only one chairperson could serve on a particular board. Seven members of the board would be appointed by the

Governor, with the advice and consent of the Senate. The seven members would have to include: a geologist, a chemical engineer, and a toxicologist, each of whom was on the faculty of an institution of higher education. In addition, representatives from a manufacturing industry, two representatives of the public and one from a municipality would also be included on the board. The Governor could appoint more than one representative from the respective groups and professions (for, example more than one representative from a municipality). Only one person from each group, however, (two from the public) could serve on a particular board. Further, the person representing the municipalities would have to be associated with a municipality or municipal association that was or represented the same type of municipality in which the facility was proposed to be located. A member representing a municipality or the public could not serve on a site review board that was evaluating an application for a facility located within a county or municipality in which that member was directly employed or in which that person resided.

Application Review

Site review boards would be given hazardous waste storage construction applications by the Director of the Department of Natural Resources. Sites that changed their method of hazardous waste treatment or disposal at the time the bill took effect would be subject to the construction permit requirements of the Act. Cases in which more than one construction permit application for interrelated facilities on a single site within the same municipality was submitted by the same applicant would be reviewed by a single board but would be granted or denied final approval individually. The Director or a representative of the Director would notify only the local governing body of the municipality of a construction permit application filed with the Department, instead of notifying the municipality and the county government. Site review boards that were already established before the effective date of the bill would fulfill their duties according to applicable laws in effect when the boards were established.

Within 30 days after creation of a board, the board would meet to review and establish a timetable for the consideration of an application for a proposed facility. In addition, the board would have to hold a public hearing within 45 days of its first meeting. After the public hearing comment period was closed, the board would list the issues that had to be addressed through a negotiation process and list the issues to be evaluated by the board through its deliberations. A negotiation process would take place between the applicant and the affected parties who would be identified by the board. A representative of the municipality and a representative of the county in which

H.B. 4519 (12-7-87)

the facility was proposed to be located would be considered an affected party. If requested by any affected party or the applicant, the board would appoint a mediator to assist during negotiations. The negotiation process would proceed concurrently with the board's hearing process. It would address the list of issues referred by the board and any other issues unanimously agreed to be considered by the applicant and all affected parties. The process would be completed within 150 days after the first meeting of the board unless the applicant and one or more affected parties involved in the negotiation process jointly requested an extension (not more than 60 days) and the extension was approved by the board. An extension could extend the time period in which the board either approved or rejected the construction permit application. On each negotiation issue which did not reach a negotiated settlement, the board would select between the final best offers presented by affected parties. The final best offer or the negotiated settlement could not be less stringent than the requirements of the law or pertinent decisions of the board, whichever was the most stringent. Within 180 days after the first meeting of the board, the board would make a decision on the negotiated agreement and the final best offer from each party on each issue. The 180-day time period could be extended, but an extension could not exceed 60 days. If the board did reject the construction permit application, it would have to state its reasons in writing and indicate the necessary changes to make the application acceptable if a new application were made. When the board made its decision the Director of the Department of Natural Resources would act in accord with the direction of the board.

Construction Permit Applications

Under the bill construction permit applications would have to include a disclosure statement which included the full name and business address of all of the following: the applicant, the five persons holding the largest shares of the equity in or debt liability of the proposed facility (although this requirement could be waived for applicants who were corporations with publicly traded stock), the operator (if known), three employees of the operator who would have the most responsibility for the day-to-day operation of the facility, and any other business entity (listed as a person under the Act) that had had 25% or more of the equity in or debt liability of that business entity (although this requirement could be waived for applicants who were corporations with publicly traded stock).

The disclosure statement would also have to include all convictions for criminal violations of any Federal, State, Canadian or provincial agency environmental statute. If debt liability were held by a chartered lending institution, the following information would not be required from that institution: a listing of all environmental permits or licenses issued by a Federal, State, Canadian or provincial agency revoked because of noncompliance; a listing of all activities in which the incident resulted in a threat or potential threat to the environment, and public funds were used to finance an activity to mitigate the threat or potential threat to the environment (except if the funds were voluntarily and expeditiously recovered from the applicant without litigation). Any of these listings would be grounds for denial of a construction permit by the Director. Any information required to be included in the disclosure statement which changed or was supplemented after the filing of the statement would have to be provided by the applicant, permittee, or licensee to the Department in writing within 30 days of the change or addition.

An application for a site construction permit would not be complete unless it included a copy of a newspaper notice which the applicant published at least 30 days prior to submittal of the application in a newspaper that had major

circulation in the municipality and the immediate vicinity of the proposed facility. The notice would have to contain a map indicating the location of the proposed facility and information on the nature and size of the proposed facility.

Upon receipt of a construction permit application the Director would have to review plans of the facility to determine if the proposed operation complied with the Hazardous Waste Management Act. Under the bill, the review would include review of the applicant's disclosure statement. Once the Director had coordinated and reviewed all permits, he or she would hold a public hearing within 60 days after receipt of a complete construction permit application. In addition, the Director would have to refer an application to the site review board or notify the applicant of the intent to deny the construction permit application within 120 days after the Director received the application. If the Director did refer an application to the site review board, prior to the first board meeting the Director would provide each board member with a copy of the application, a staff report including a summary of public comments, a responsiveness summary, and a draft construction permit. If the Director did not refer an application to the board within 120 days or notify the applicant of the intent to deny the permit within 120 days, the application would automatically be submitted to the board for action.

Revolving Fund

The bill would create a revolving fund within the Department of Treasury. The fund would cover the expenses of the site review board members, chairperson, and mediators, and any other expenses necessary to the deliberations of the board. When site construction permit applications were referred to a site review board by the Director, the applicant would have to pay a \$25,000 fee which would be placed in the fund. The fee would be in addition to other application fees that the applicant must pay. If expenses payable from the fund exceeded the \$25,000 fee, the additional expenses would be paid from money appropriated by the Legislature to the revolving fund. Any unexpended portion of an applicant's \$25,000 fee would be reimbursed to the applicant after the site review board process was concluded.

MCL 299.517 et al.

SENATE COMMITTEE ACTION

The Senate Committee on Natural Resources and Environmental Affairs adopted language that stated that nothing in the bill could be construed to permit the siting of a treatment, storage or disposal facility within the borders of Ontonagon and Genesee counties.

FISCAL IMPACT

The bill would result in revenue to the State at the rate of \$25,000 per permit application. The \$25,000 permit fee should offset the expenses of the Site Review Board.

ARGUMENTS

Supporting Argument

Environmentally sound hazardous waste management practices are critical to the protection of the States resources. These issues must be promptly addressed so that the State will be able to accommodate the current and future waste management needs of Michigan businesses and residents. In order to accomplish this task a viable system for siting new waste facilities is needed. House Bill 4519 proposes such a system. Some of the strong points of the bill include the involvement of technically competent boards that would also represent the affected communities, and the proposed negotiation process.

Through the process of receiving "final best offers" the board would ensure that local issues were addressed and the best possible settlements reached.

Legislative Analyst: B. Baker
Fiscal Analyst: A. Rich

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.