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**SFA****BILL ANALYSIS**

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Senate Bill 4 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Loren Bennett  
Committee: Natural Resources and Environmental Affairs

Date Completed: 8-15-97

## **RATIONALE**

The Solid Waste Management Act (which was recodified in 1994 as Part 115 of the Natural Resources and Environmental Protection Act) originally was enacted in 1978 to provide for the licensure and regulation of persons and organizations engaged in transporting, processing, or disposing of solid waste. Counties serve as the primary planning units for managing solid waste, and are required to prepare 20-year management plans that address their waste disposal needs and capacity. Amendments adopted in 1988 generally prohibit a person from disposing of waste in a county where the waste was not generated, unless that county's solid waste management plan authorizes the acceptance of that waste. These amendments were the subject of litigation that was resolved by the U.S. Supreme Court in 1992 (*Fort Gratiot Sanitary Landfill, Inc. v Michigan Department of Natural Resources*, 504 US 353; 112 S Ct 2019). The Court held that the 1988 "...Waste Import Restrictions unambiguously discriminate against interstate commerce and are appropriately characterized as protectionist measures that cannot withstand scrutiny under the Commerce Clause".

Although a county may not constitutionally refuse to accept solid waste simply because it was generated outside of Michigan, the "Waste Import Restrictions" remain in the statute, and the Michigan Court of Appeals held in 1995 that the invalid application of those amendments can be severed from the remainder of the Act (*Citizens for Logical Alternatives and Responsible Environment v Clare County Board of Commissioners*, 211 Mich App 494). Despite the U.S. Supreme Court ruling, many people believe that Michigan should be able to limit the importation of out-of-state waste, at least to the extent permitted by Federal law. It has been suggested that statutory language to this effect would set the stage for State regulation in the event of Congressional action, and could bring the issue to the attention of Federal legislators.

## **CONTENT**

The bill would amend Part 115 of the Natural Resources and Environmental Protection Act to prohibit solid waste haulers from transporting or disposing of within this State solid waste that was generated outside of the State. The bill also would prohibit solid waste disposal areas from accepting for disposal solid waste that was generated outside of Michigan. These prohibitions would not apply, however, unless the U.S. Congress enacted authorization for the states to regulate the transportation and disposal of solid waste, and would apply only to the extent and in a fashion authorized by Federal law.

As soon as possible following the bill's effective date, the Department of Environmental Quality (DEQ) would have to notify each state and Canada that disposal areas and incinerators in Michigan could not accept waste that was not generated in this State unless the DEQ certified that the generating state or country had a solid waste disposal regulatory system that was at least as stringent and protective of the public health, safety, and welfare, and the environment, in terms of what waste was allowed in the waste stream, as existed in Michigan. (The DEQ would be required to do so in order to "protect the public health, safety, and welfare, and the environment of this state from solid waste such as tires, batteries, yard clippings, used oil, and similar waste products the disposal of which is restricted in this state".)

As soon as possible after this notification, the DEQ would have to compile a list of certified states and countries that had a solid waste disposal regulatory system that made them eligible to dispose of solid waste in Michigan. A country or state that wished to be certified could supply the DEQ with documentation, including copies of all pertinent statutes and rules, that supported its claim that it had a regulatory system that was at least as stringent and protective as that of this State. The DEQ would have to prepare a list of certified states

and countries, and give a copy of the list to each person licensed to operate a disposal area or municipal solid waste incinerator in this State. A person could not accept for disposal in this State solid waste or municipal solid waste incinerator ash that was generated by a state or country that was not on the DEQ's list.

The bill specifies that its provisions would not prohibit the owner or operator of a disposal area from accepting homogeneous solid waste materials, other than municipal solid waste incinerator ash, that were generated outside of Michigan if those materials met the requirements of this State for disposal in the disposal area.

Also, if any provisions of the bill or Part 115 were for any reason held to be invalid or unconstitutional, that holding would not affect the validity of the remaining provisions .

Proposed MCL 324.11514a

## **BACKGROUND**

The sections of the Natural Resources and Environmental Protection Act that contain the 1988 Waste Import Restrictions are as follows:

*Sec. 11513. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan...*

*Sec. 11515... (6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county...*

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Michigan should stop being a dumping ground for garbage generated in other states and Canada. In the 1995-96 fiscal year, Michigan landfills accepted 42.4 million cubic yards of solid waste, which included 5.7 million cubic yards of out-of-state

waste, according to figures of the Department of Environmental Quality. In addition, the amount imported from Canada might be expected to increase, since the Metro Toronto council recently awarded a multimillion dollar contract to Browning-Ferris Industries to haul the region's garbage to the Arbor Hills landfill in Washtenaw County, according to an article in the *Lansing State Journal* (2-24-97). Although this State presently cannot regulate or prohibit the disposal in Michigan of out-of-state waste, the bill would enable the State to refuse out-of-state waste at the borders if Congress acted to permit the interstate regulation of waste transfers. While the bill would apply only to the extent allowed by Federal law, in the meantime it would place specific prohibitions on the books and could bring the issue to the attention of Federal decision-makers.

**Response:** By enacting an outright ban on the disposal in Michigan of out-of-state waste (to the extent authorized by Federal law), the bill could undermine the ability of individual counties to accept out-of-state waste. Under the Waste Import Restrictions in current law, county plans may specifically permit imported waste.

### **Opposing Argument**

Controlling the flow of out-of-State waste into local communities could jeopardize the future of many privately owned landfills. Although some of these facilities could rely on locally generated waste, others would not remain profitable enough to justify the large capital costs and potential long-term liability involved in operating a landfill. For residents and businesses in Michigan, decreased competition would mean higher disposal fees, which would lead to greater manufacturing costs and consumer prices. As private landfill operators left the scene, local and county governments would have to step in and provide necessary solid waste disposal and recycling services. This in turn could lead to increased governmental involvement, higher taxes, and the taxpayers' assumption of the long-term liability. Furthermore, the proposed controls are largely unnecessary. To address community concerns, more and more landfill operators reportedly are voluntarily developing mutually beneficial host community agreements that provide the community with attractive financial benefits and give the local government a stronger voice in issues like traffic, odor, noise, pests, and operating hours.

Legislative Analyst: S. Margules

**FISCAL IMPACT**

official statement of legislative intent.

The bill would have no direct fiscal impact on State government, and an indeterminate fiscal impact on local governments that collect revenue from fees on solid waste disposed of in their jurisdiction.

Fiscal Analyst: G. Cutler

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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