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SFA**BILL ANALYSIS**

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Senate Bill 554 (Substitute S-1 as passed by the Senate)
Senate Bills 729, 730, and 731 (as passed by the Senate)
Sponsor: Senator Loren Bennett
Committee: Natural Resources and Environmental Affairs

Date Completed: 1-23-98

RATIONALE

Parts 111 and 121 of the Natural Resources and Environmental Protection Act (NREPA) govern the transportation of hazardous waste and liquid industrial waste, respectively. Waste transporters are subject to licensure by the Department of Environmental Quality (DEQ), and must obtain both a business license and, for each vehicle used to transport waste, a vehicle license. License fee revenue is deposited in the Hazardous Waste Transporter Account or the Liquid Industrial Waste Transporter Account of the Environmental Pollution Prevention Fund. According to the DEQ, the fees generate approximately \$1.6 million per year. While a portion of this revenue is used to administer the transporter licensure program, the majority of it apparently pays for a 25% match requirement for a grant from the U.S. Environmental Protection Agency, which is used to administer the State's hazardous waste program.

It has been suggested that the existing licensure program should be replaced by the Uniform State Hazardous Materials Transportation Registration and Permit Program. The Uniform Program was recommended in a report submitted to the U.S. Secretary of Transportation under a section of Federal law (49 USC 5119). That law required the Secretary to set up a working group of state and local government officials for the purpose of establishing uniform forms and procedures for a state to register persons transporting hazardous material by motor vehicle in the state. The law also requires the Secretary to prescribe regulations to carry out the recommendations with which the Secretary agrees. The law states, "After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation." Although the Federal regulation has not yet been promulgated, the rule-

making process is under way and the Secretary of Transportation reportedly is in agreement with the working group's recommendations for a uniform program.

A closely connected issue involves the fees that Michigan charges hazardous waste transporters. Under the Federal law, "A State ... may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, development, and maintaining a capability for emergency response" (49 USC 5125). According to the DEQ and others, Michigan's transporter licensure program has been determined to be out of compliance with the Federal requirements, particularly in regard to Michigan's use of the fee revenue for matching fund purposes. This means that the State's authority to regulate hazardous waste transporters could be preempted and, according to the DEQ, the State could be required to return approximately \$13 million in fees.

CONTENT

Senate Bill 554 (S-1) would create the "Hazardous Materials Transportation Act" to provide for the registration and permitting of motor carriers engaged in the transportation of hazardous materials (hazardous waste or liquid industrial waste) by highway. The bill would require motor carriers to designate their "base state", and to pay fees depending upon their base state designation. A base state other than Michigan would be the state in which a carrier had the highest number of hazardous materials miles traveled among states participating in the Uniform State Hazardous Materials Transportation Registration and Permit

Program. Motor carriers required to register in Michigan would have to pay an “apportioned vehicle registration fee” based upon their percentage of transportation in this State.

The bill also would establish liability coverage requirements for motor carriers; create the “Hazardous Materials Transportation Permit Fund”; require the registration and permit fees collected under the proposed Act to be deposited into the Fund, for implementation of the Act and other hazardous materials transportation safety activities; specify responsibilities of the Department of Environmental Quality; permit the DEQ, the Department of State Police, a local law enforcement agency, or the Department of Natural Resources to enforce the bill; permit the DEQ or the State Police to inspect vehicles or facilities; preempt hazardous materials transportation registration or permitting programs administered by local units; and provide that certain data would not be subject to public disclosure.

Senate Bills 729 and 730 would amend Part 111 (Hazardous Waste Management) and Part 121 (Liquid Industrial Waste) of the NREPA, respectively, to replace existing provisions that govern the licensure of hazardous waste transporter businesses, vehicles transporting hazardous wastes, persons who transport liquid industrial waste, and vehicles used to transport liquid industrial waste. Under the bills, these persons and vehicles would have to comply with the proposed Hazardous Materials Transportation Act.

Senate Bill 731 would amend the Revised Judicature Act (RJA) to allow the seizure and forfeiture of property involved in a violation of Part 111 or Part 121 of the NREPA.

The bills would take effect on July 1, 1998. Senate Bills 729-731 are tie-barred to Senate Bill 554. Senate Bills 729 and 730 also are tie-barred to Senate Bill 731, which is tie-barred to those two bills.

Senate Bill 554 (S-1)

Base State Designation/Fees

“Motor carrier” would refer to a person engaged in the transportation of hazardous materials by highway. “Hazardous materials” would mean “hazardous waste” as defined in Part 111 of the NREPA or “liquid industrial waste” as defined in

Part 121 of the NREPA.

A motor carrier that had its principal place of business in Michigan would have to designate this State as its base state. A motor carrier having its principal place of business outside of Michigan would have to determine its base state designation by the highest number of hazardous materials miles traveled among the states participating in the Uniform Program.

A motor carrier that designated Michigan as its base state would have to register with and obtain a permit from the DEQ before transporting hazardous materials within this State. A motor carrier that designated another participating state as its base state would have to register with and obtain a permit from that state, with the appropriate fees paid for Michigan, before transporting hazardous materials in this State.

A motor carrier required to register in Michigan would have to file with the DEQ Part I of the uniform application (established under the uniform program). The motor carrier also would have to pay a \$50 administrative fee and the apportioned vehicle registration fee, calculated by the formula in the bill (described below). A motor carrier required to obtain a permit in Michigan would have to file Part II of the uniform application with the DEQ and pay a \$500 permit review fee.

A motor carrier would have to have and maintain financial responsibility for bodily injury, property damage, or environmental damage to third parties caused by accidental occurrences arising from the carrier’s hazardous materials transportation activities. The motor carrier would have to have and maintain fleet liability coverage for accidental occurrences in an amount not less than \$1 million per occurrence for hazardous wastes and \$750,000 per occurrence for liquid industrial waste. A motor carrier with fleets including only vehicles under 10,000 pounds gross vehicle weight, however, would have to have and maintain fleet liability coverage for accidental occurrences in an amount not less than \$300,000. Proof of the required domiciled fleet liability coverage would have to be provided to and maintained by the Public Service Commission (PSC) in the Department of Consumer and Industry Services, with certification of proper coverage provided to the DEQ. Demonstration of proof of the required nondomiciled fleet liability coverage would have to be provided to and maintained with the Surface Transportation Board in the Federal Highway Administration. Fleet liability coverage not included under the authority of the PSC or the Surface

Transportation Board would have to be demonstrated to the DEQ by submittal of the document entitled "endorsement for motor carrier policies of insurance for public liability under section 29 or 30 of the motor carrier act of 1980".

Upon a motor carrier's compliance with these filing and insurance requirements, the DEQ would have to issue a notice of registration form and a permit to the motor carrier. The notice and permit would have to include a unique number for each motor carrier assigned by the Department.

A motor carrier would have to maintain a copy of the notice of registration form and the permit in each power unit used to transport hazardous materials in all participating states. ("Power unit" would mean a motor vehicle that provided motor power to the entire combination, or to the vehicle if a single unit.) The notice and permit would not be transferable between motor carriers or owners. The original notice or permit would have to be maintained at the motor carrier's principal place of business and be available for inspection during normal business hours.

Before entering the State, a motor carrier could obtain a 10-day temporary permit in lieu of a notice of registration form and a permit. The fee for the temporary permit would be \$100.

A motor carrier transporting liquid industrial waste generated on or from property or equipment in which the carrier owned an interest would be exempt from registration and permitting as required in the bill, but would remain subject to all other provisions of Part 121 of the NREPA.

Apportioned Registration Fee

The apportioned vehicle registration fee would have to be equal to the percentage of transportation in this State multiplied by the percentage of all hazardous materials transportation, multiplied by the total number of power units operated, multiplied by a per-vehicle fee of \$50, and would have to be calculated as described below.

A motor carrier would have to determine its percentage of transportation in this State by dividing the number of miles traveled in Michigan under the International Registration Plan (IRP) during the previous year by the number of miles it traveled nationwide under the IRP. If a motor carrier operated only in this State, its percentage would be 100%. If a motor carrier were not registered in the IRP, it would have to calculate the number of miles

traveled using the method in the Plan. If a motor carrier operated more than one fleet under the IRP, it could calculate each fleet's contribution to the motor carrier's total fee separately. A motor carrier that operated in another state under a reciprocal agreement with that state would have to include the miles operated under the agreement as miles traveled in Michigan in calculating mileage under these provisions.

A motor carrier would have to determine its percentage of hazardous materials transportation using either of the following:

- For less than truckload shipments, it would have to divide the weight of all of the carrier's hazardous materials shipments transported during the previous year by the total weight of all shipments transported during the same year.
- For truckload shipments, it would have to divide the total number of hazardous materials shipments during the pervious year by the total number of all shipments transported during the same year.

Under either of those options, the motor carrier would have to select the midpoint of the 10% range that most closely approximated the carrier's calculation of its hazardous materials transportation business.

A motor carrier could use data from its most recent complete fiscal year or the most recent calendar year in calculating the percentage required under these provisions.

Permit Fund

The Hazardous Materials Transportation Permit Fund would be created in the State Treasury. The registration and permit fees collected under the bill would have to be deposited into the Fund, and the State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit to it all interest and earnings from investment. Money remaining in the Fund at the close of the fiscal year would remain in the Fund.

The DEQ would have to spend money from the Fund, upon appropriation, for the implementation of the bill. In addition, funds not spent for implementation could be used for emergency response, training, and other activities related to hazardous materials transportation safety that were initiated by the DEQ.

Registration & Permitting Agreements

The DEQ could enter into agreements with Federal agencies, a national repository, or other participating states as needed to allow for the reciprocal registration and permitting of motor carriers. The agreements could include procedures for determining base states, the collection and distribution of fees, dispute resolution, the exchange of information for reporting and enforcement, and other provisions necessary to administer the bill and the uniform program.

The DEQ would have to confer with the Department of State with the intent of coordinating the registration and permitting required under the bill with other permitting and registration programs. The DEQ and, if appropriate, the Department of State could make payments to agencies of other participating states in the Uniform Program, for the purpose of reimbursement of apportioned registration permit fees.

The DEQ could develop the necessary forms, applications, and software required to implement the bill.

Inspection/Enforcement

The DEQ or the Department of State Police could inspect or examine any motor vehicle or facility operated by a motor carrier, or conduct investigations, audits, or compliance reviews as necessary to determine compliance with the bill and the Uniform Program, or to determine eligibility for registration or permitting under the bill and the Uniform Program.

The DEQ or the State Police also could inspect and electronically reproduce any papers, books, records, documents, or other evidentiary material necessary to determine if a motor carrier was complying with the bill and the Uniform Program, or to determine eligibility for registration or permitting.

The DEQ, the State Police, the Department of Natural Resources, or a local law enforcement agency could enforce the bill.

Motor carriers under the jurisdiction of the bill would have to comply with all applicable provisions of the Motor Carrier Safety Act, all applicable provisions of the NREPA, and any other applicable requirements of law.

A person who violated the bill would be responsible for a State civil infraction and would have to be

fined up to \$2,500. Fines would have to be deposited in the Hazardous Materials Transportation Permit Fund.

Renewal

A registration issued under the bill would be valid for one year from the date a notice of registration form was issued. A permit would be valid for three years from the date issued or until a motor carrier failed to renew its registration, whichever occurred first. Application for renewal of a registration or permit would have to be made at least 90 days before expiration. The renewal fee would be the same as the fee for an original registration or permit.

Each year, a motor carrier with a valid permit would have to certify that its current operations were not substantially different from its operations on the date the carrier obtained its permit, and would have to certify its compliance with all applicable laws and regulations in its application for renewal. Failure to comply with the certification in Part II of the Uniform Program would be prohibited.

A motor carrier whose name, principal place of business, or business telephone number had changed during the time a notice of registration or permit was effective would have to submit to the DEQ an amended registration or permit statement within 30 days of the change. Upon receiving the statement and without charging a fee, the Department would have to issue an amended notice of registration form or permit.

Revocation/Suspension/Denial

The DEQ immediately would have to suspend or revoke a registration or permit, or deny an application for a registration or permit upon the determination of any of the following conditions:

- The motor carrier made a materially false or misleading statement in an application.
- The motor carrier's operation consisted of one or more serious or repeated violations of the laws of this State.
- The motor carrier had been issued an unsatisfactory rating under the motor carrier rating system developed by the U.S. Department of Transportation.
- The motor carrier was under a current out-of-service order issued under the Motor Carrier Safety Act, or an out-of-service order issued by the U.S. Department of Transportation.
- The motor carrier did not maintain the appropriate level of financial liability coverage mandated by the laws of this State.

If the DEQ determined that any of those conditions existed, the Department would have to do one of the following, as appropriate:

- Suspend or revoke a notice of registration or permit previously issued under the bill.
- Suspend or revoke the hazardous materials transportation operations in this State by a motor carrier operating under a registration or permit issued by another participating state.
- Deny an application for registration or permit by a motor carrier.

Upon revocation, suspension, or application denial, the DEQ would have to notify the motor carrier, by certified mail, of the reasons for that action, and indicate the steps necessary for reinstatement. In the case of a suspension, the DEQ would have to indicate the date by which compliance was required before a revocation would be issued. The Department also would have to indicate the steps provided for appeal of the suspension, revocation, or denial.

Within 10 days of receiving the notice of suspension, revocation, or application denial, the motor carrier could submit a request for a contested case hearing with the DEQ, by certified mail. A hearing would have to be scheduled within 30 days of the receipt of the request, and would have to be held in Lansing.

The DEQ could reinstate a notice of registration form or permit that was suspended, or issue a notice of registration form or permit that was previously denied, if the Department were satisfied that the violations causing the suspension or denial had been corrected and the motor carrier's operations had changed sufficiently to prevent further occurrences of the violations.

Scope of Act/Release of Information

The bill would preempt and supersede hazardous materials transportation registration or permitting programs administered by any city, village, township, county, or other political subdivision of the State. Motor vehicles owned and operated by a local, state, or Federal government, or any other political subdivision, would not be subject to the bill.

A motor carrier that held a valid permit in compliance with Part 111 of the NREPA on the bill's effective date, would be required to submit a completed uniform application to the DEQ upon the expiration of that permit.

The following data submitted on a uniform application under the bill would be private data and not subject to the Freedom of Information Act:

- Information related to a motor carrier's customers and service provided to specific customers.
- Financial balance sheet and income statement data.
- Ownership and debt liability data.
- Information related to a motor carrier's parent companies, affiliates, and subsidiaries.

For the purposes of administering the Uniform Program, however, the DEQ could release any information on individuals or motor carriers to the U.S. Department of Transportation, any other participating state or state agency, or the national repository established under the Uniform Program.

Senate Bill 729

The bill would delete provisions in Part 111 of the NREPA requiring a license for a hazardous waste transporter business and a vehicle transporting hazardous wastes off site. The bill also would delete provisions specifying license application requirements, and setting biennial license fees at \$1,000 for a transporter business license and \$500 for a vehicle license. In addition, the bill would delete a requirement that license fees be deposited in the Hazardous Waste Transporter Account

within the Environmental Pollution Prevention Fund. The bill would repeal a section requiring the DEQ to examine a business license application and conduct an inspection to verify that the applicant's equipment, location, and methods are adequate to effectuate service; and requiring the DEQ to establish inspection standards and requirements (MCL 324.11132).

The bill would require a transporter, if transporting by highway, to register and be permitted in accordance with the Hazardous Materials Transportation Act and carry a copy of the registration and permit on the vehicle for inspection by the DEQ, the Department of State Police, or the authorized representative of the Department of Community Health (DCH), a peace officer, or a representative of the Environmental Protection Agency (EPA). A transporter also would have to do the following:

- Obtain and use an EPA identification number in accordance with rules promulgated under Part 111.
- Comply with the transfer facility operating and financial responsibility requirements in rules promulgated under Part 111.
- Comply with the consolidation and commingling requirements in the rules.
- Comply with the vehicle requirements in the rules.
- Use, complete, and retain a manifest for each shipment of hazardous waste as required by Part 111 and the rules.
- Keep all records readily available for review and inspection by the DEQ, the State Police, or the authorized representative of the DCH, a peace officer, or a representative of the EPA.
- Retain all records as required by the rules for three years. This retention period would be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the DEQ.
- Comply with the reporting requirements in the rules.
- Comply with the import and export requirements in the rules.
- Comply with the requirements regarding hazardous waste discharges in the rules.
- Comply with the land disposal restriction requirements in the rules.
- Comply with the universal waste requirements in the rules.
- Keep the outside of all vehicles and accessory equipment free of hazardous waste or hazardous waste constituents.

The DEQ could conduct an inspection to verify that a transporter's equipment, location, and methods were adequate to effectuate service under Part 111 and the rules. The DEQ would have to establish, by rule, the inspection standards and requirements.

Currently, the NREPA provides that the DEQ or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to Part 111 or a rule promulgated under it. The bill would retain that provision but delete a requirement that the DEQ request the Attorney General to petition the circuit court for permission to preserve the property as evidence to prosecute the violation or file an appropriate action to condemn the property. The bill specifies that a vehicle, equipment, or other property used in the violation of Part 111 or a rule would be subject to seizure and forfeiture as provided in Chapter 47 of the RJA. The bill also would delete provisions concerning the filing and investigation of complaints about transporting vehicles.

Currently, a person who violates Part 111 by failing to carry a hazardous waste transporter license in a vehicle, or who transfers a business or vehicle license on violation of the NREPA, is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$500. Under the bill, this penalty would apply, instead, to a person who violated the proposed registration and permitting requirements or failed to keep the outside of all vehicles and accessory equipment free of hazardous waste.

The NREPA requires the DEQ to coordinate and integrate the provisions of Part 111 for purposes of administration and enforcement with appropriate State and Federal law, including specific laws listed in Part 111. The bill would include the Hazardous Materials Transportation Act among those laws.

Senate Bill 730

Transporters

The bill would repeal a section of Part 121 that requires a person to obtain a transporter business license in order to engage in the business of transporting liquid industrial waste from the premises of another person; and sets biennial fees at \$400 for a transporter business license and \$100 for a vehicle license (MCL 324.12104). The bill also would repeal sections that do the following:

- Require the DEQ to deny an application for a business license, and allow the DEQ to

revoke or suspend a license, under various conditions (MCL 324.12108).

- Require transporters to demonstrate proof of financial responsibility and liability coverage (MCL 324.12110).
- Allow a person to operate until the expiration of a license issued under former provisions of the law (MCL 324.12118).

Currently, a vehicle may be licensed under Part 121 and Part 117 (Septage Waste Servicers) if certain conditions are met. The bill provides, instead, that a transporter registered and permitted in accordance with the Hazardous Materials Transportation Act and under Part 117 would have to comply with all of the following:

- All registration and permitting requirements of the Hazardous Materials Transportation Act and licensing requirements of Parts 121 and 117 would have to be met.
- Septage waste or liquid industrial waste transported by the permit or license holder could not be disposed of on land.
- All liquid waste, including septage waste, would have to be manifested pursuant to requirements in Part 121.
- The words "Land Application Prohibited" would have to be affixed in a conspicuous location, visible on both sides of the vehicle and clearly legible during daylight hours from 50 feet.

Currently, a transporter is required to maintain a trip log for consolidated manifest shipments and for brine shipments. The bill would delete a requirement that the transporter display the logs upon the request of the DEQ or a peace officer.

Vehicles

The bill would delete provisions requiring certain information to be affixed to a vehicle used to transport liquid industrial waste; requiring a vehicle to carry a copy of the license issued by the DEQ; and requiring a vehicle to operate in compliance with specific statutes. Under the bill, a vehicle used to transport liquid industrial waste, if transporting by highway, would have to carry a copy of the registration and permit issued in accordance with the Hazardous Materials Transportation Act.

Currently, to avoid cross-contamination, all portions of a vehicle that have been in contact with liquid industrial waste must be cleaned and decontaminated before the transport of any products, incompatible waste, or nonwaste material. The bill would extend this requirement to

equipment. The bill also provides that, before the transport of liquid industrial waste, all portions of a vehicle or equipment would have to be cleaned and decontaminated, as necessary, of any waste regulated pursuant to Part 111.

Inspections

The bill would delete provisions requiring the DEQ to examine an application for a liquid industrial waste transporter business license or a vehicle license; permitting the DEQ to conduct an inspection to verify information; and requiring the DEQ to issue an license if the applicant is in compliance with the applicable requirements of Part 121. The bill provides that the Department could conduct an inspection to verify that the equipment, location, and methods of a transporter were adequate to effectuate service under Part 121.

Generators

Part 121 defines "generator" as a person whose act or process produces liquid industrial waste. A generator currently is required to engage, employ, or contract for the transportation of liquid industrial waste only with a transporter licensed under Part 121, unless otherwise authorized in that part. The bill provides, instead, that a generator, if transporting by highway, would have to engage, employ, or contract for the transportation of liquid industrial waste only with a transporter registered and permitted under the Hazardous Materials Transportation Act. A generator also would have to give the transporter the signed copies of the manifest to accompany the liquid industrial waste to the designated facility.

The NREPA contains specific requirements concerning the use and retention of a manifest for each shipment of liquid industrial waste transported to a designated facility. The bill specifies that a generator transporting its own waste in quantities of 55 gallons or less would not be subject to manifest requirements if all of the following conditions were met:

- The waste was accompanied by a record showing the source and quantity of the waste and the designated facility where the waste was being transported.
- The generator obtained a signature from the designated facility acknowledging receipt of the waste and provided a copy of the record of shipment to the facility.
- The generator retained a copy of the record of shipment.

- The designated facility was managed in accordance with Part 121.

Violations

Currently, the DEQ or a peace officer may seize a vehicle used or operated in a manner or for a purpose in violation of Part 121. Under the bill, the DEQ or a peace officer could seize a vehicle, equipment, or other property used or operated in a manner or for a purpose in violation of Part 121. A vehicle, equipment, or other property used in violation of Part 121 would be subject to forfeiture. The DEQ could request the Attorney General, or the prosecuting attorney of the county where the violation occurred, to condemn the vehicle, equipment, or property. Funds generated from the forfeiture would have to be used to cover any expenses associated with forfeiture proceedings and the balance deposited in the Hazardous Waste Transporter Account within the Environmental Pollution Prevention Fund.

The bill also provides that the DEQ or a peace officer could enter at reasonable times any generator, transporter, or designated facility or other place where liquid industrial wastes were or had been generated, stored, treated, disposed of, or transported from, and could inspect the facility or other place and obtain samples of the wastes and samples of the containers or labeling of the wastes for the purposes of enforcing or administering Part 121.

Currently, it is a misdemeanor, punishable by imprisonment for up to 90 days and/or a fine of at least \$200 but not more than \$500, to violate sections of Part 121 concerning vehicles' identification, licensure, compliance with other laws, covering or closure, and decontamination, and concerning transporters' trip logs. Under the bill, this penalty would apply, instead, to violations concerning generator identification numbers; a generator's submission of a manifest to the DEQ; a transporter's affixing the words "Land Application Prohibited" to a vehicle; the closure or covering of vehicles and containers used to transport liquid industrial waste; the cleaning of vehicles or equipment that have been in contact with liquid industrial waste; a transporter's maintenance of a trip log; a facility's certification on a manifest; and a facility's returning a copy of a manifest to a generator.

"Liquid Industrial Waste"

The bill would amend the definition of "liquid industrial waste" to exclude the following:

- A used oil that was directly burned to recover energy or used to produce a fuel if the material met the used oil specifications of Part 111 of the NREPA; the material contained no greater than 2 ppm polychlorinated biphenyls; the material had a minimum energy content of 17,000 btu/lb; and the material were expressly authorized as a used oil fuel source, regulated under Part 55 (Air Pollution Control), or, in another state, regulated under a similar air pollution control authority.
- A liquid fully contained inside a manufactured article, until the liquid was removed or the manufactured equipment was discarded, at which point it would become subject to Part 121.
- A liquid waste sample transported for testing to determine its characteristics or composition. The sample would become subject to Part 121 when discarded.

"Used oil" would mean any oil that had been refined from crude oil, or any synthetic oil, that had been used and that, as a result of the use, was contaminated by physical or chemical impurities.

Senate Bill 731

The bill would amend the definition of "crime" in Chapter 47 of the Revised Judicature Act, which provides for the seizure and forfeiture of property that is the proceeds or an instrumentality of a crime. Under the bill, the definition would include a violation of Part 111 or 121 of the NREPA.

MCL 324.11104 et al. (S.B. 729)
324.12101 et al. (S.B. 730)
600.4701 (S.B. 731)

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

The Uniform Program provides for the reciprocal recognition of participating states' hazardous waste transporter permits and the apportionment of fees, eliminates duplicative permitting efforts (which then allows a state to focus on its own transporter community), and shields a state from challenges to its permitting authority. According to the Association of Waste Hazardous Materials Transporters (AWHMT), 37 states administer 53 registration and/or permitting programs for the transportation of hazardous materials, and none of these permits were reciprocal until 1994. Now, at

least five states have implemented the Uniform Program.

By aligning this State's requirements with those of the Uniform Program, the bills would enable Michigan to continue overseeing a critical component of the industries that manage hazardous waste and liquid industrial waste. This oversight is important to assure the effective and safe management of the waste, and to ensure that it is directed to the proper treatment and disposal facilities. Furthermore, once the U.S. Department of Transportation promulgates a regulation, every state must have a uniform, reciprocal program or face the preemption of its permitting program. Rather than waiting for a Federal deadline, Michigan should voluntarily join the Uniform Program that has been recommended to the Secretary of Transportation.

Supporting Argument

The fees that Michigan charges to hazardous material transporters are subject to challenge on two grounds: Arguably, they violate both the Commerce Clause of the U.S. Constitution, which prohibits a state from placing an undue burden on interstate commerce, and the Federal law that requires a state's hazardous material transportation fee to be fair and used for a related purpose. According to the AWHMT, flat fees (like those Michigan charges) have been overturned because the cumulative tax burden on interstate transporters that perform only a portion of their work in any given state, puts them at a competitive disadvantage to intrastate transporters that work entirely within one state. Apportioned fees, however, ensure that all carriers pay their fair share for state services. These bills would protect Michigan from having to defend its fee structure in court and potentially having to repay millions of dollars in improperly collected fees.

Supporting Argument

Hazardous materials transporters would realize several benefits under these bills, including the elimination of redundant paperwork and the assurance that all transporters operating in this State would receive the same level of compliance review. The AWHMT reports that Michigan issues about 238 permits a year to transporters based outside of the State. The State, however, has no ability to perform on-site audits of these transporters, although the facilities of in-State transporters can be audited. According to the AWHMT, all states must perform on-site audits of transporters under the Uniform Program.

Supporting Argument

Senate Bills 729 and 730 would establish

consistent procedures for the forfeiture of property under Parts 111 and 121 of the NREPA. Senate Bill 731 would bring the Revised Judicature Act into conformity with those provisions.

Opposing Argument

These bills could jeopardize the safety of Michigan motorists and the environment. By reducing the fees as proposed, the bills would seriously undermine the State's ability to inspect vehicles that transport hazardous waste. Reportedly, the State Police now inspect only one out of five vehicles, and the cost of conducting inspections is not actually known. It also is reported that a spill occurs in approximately one-fourth of the accidents that involve trucks hauling hazardous materials. In addition, of the vehicles that were inspected in 1995, close to 30% evidently were given letters or warnings by the State Police for violations of State and Federal law. By drastically reducing the fees that hazardous material transporters pay, the bills would make it nearly impossible to have an effective level of inspection and enforcement. Furthermore, performing inspections would be permissive, rather than mandatory, under the bills.

Response: The bills would not lessen any existing safety inspection program. Although the DEQ currently does inspect facilities, these inspections are for the purpose of determining administrative compliance with the law, not for safety purposes. Safety inspections by the State Police are performed at roadside stops or border crossings; they are not done pursuant to hazardous materials requirements under the NREPA. Since fees collected under the Uniform Program may be used for safety purposes, however, the DEQ has suggested that it could use some of the fee revenue to fund safety inspections by the State Police. Thus, inspection activity could be enhanced under this legislation.

Opposing Argument

Enacting the Uniform Program at this time could be premature. Although the Federal law does require the U.S. Secretary of Transportation to prescribe regulations for a uniform program, there is no telling when those regulations will be promulgated. It also is not certain what the regulations will contain. Michigan should wait and see what the Federal law actually requires.

Opposing Argument

The proposed fee reduction would eliminate funds that secure a Federal grant for the State's hazardous waste program. Although the Environmental Pollution Prevention Fund reportedly has enough money to pay the required match for three years, how the lost revenue would be replaced is unknown.

hazardous waste emergency response and cleanup activities, and to provide match money for approximately \$3 million in Federal funds.

FISCAL IMPACT

Senate Bill 554 (S-1)

Department of Environmental Quality

The bill would establish a new “uniform program” that, according to the Department of Environmental Quality, is anticipated to generate between \$180,000 and \$220,000 per year from an “apportioned vehicle registration fee”. This revenue would be used to implement the uniform application process.

Department of State Police

The Department of State Police could incur additional costs under the bill should the Department use its authority to inspect, investigate, and enforce the regulations established in the bill. It is unclear whether the Department of Environmental Quality would provide to the State Police funds generated by the bill to assist with the State Police enforcement costs, though the bill does provide for Fund revenue to be used for implementation of the proposed act.

Senate Bills 729 and 730

According to the Department, the bills would reduce restricted revenues to the State by approximately \$1.6 million, and matching Federal revenues by approximately \$3 million.

Senate Bill 729 would delete Section 11130, the hazardous waste transporter business license, which is estimated by the Department to reduce annual revenues to the State by \$1.5 million. The Department currently administers a Hazardous Waste Transporter program (MCL 324.11130) that includes a \$1,000 business application fee and a \$500 vehicle application fee.

Senate Bill 730 would repeal Section 12104, the liquid industrial waste transporter business license, which is estimated to reduce annual revenues to the State by \$75,000. The Department administers a Liquid Industrial Waste Transporter program (MCL 324.12110) that includes a \$400 business application fee and a \$100 vehicle application fee.

The fee revenue from these two programs is deposited into the Environmental Pollution Prevention Fund, which is estimated to have a \$3.5 million balance. Approximately \$1 million is appropriated annually to fund 57 FTEs in the hazardous waste program. The funds are used for

Senate Bill 731

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

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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.