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**SFA**



**BILL ANALYSIS**

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Senate Bills 729, 730, and 731 (as introduced 10-1-97)  
Sponsor: Senator Loren Bennett  
Committee: Natural Resources and Environmental Affairs

Date Completed: 10-7-97

## **CONTENT**

**Senate Bills 729 and 730 would amend Part 111 (Hazardous Waste Management) and Part 121 (Liquid Industrial Waste) of the Natural Resources and Environmental Protection Act (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 "Hazardous Waste Transportation Act" (proposed by Senate Bill 554).**

**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 121 of the NREPA.**

All of the bills 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 729**

Part 111 of the NREPA defines "transporter" as a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water. The bill would delete provisions requiring a license for a hazardous waste transporter business and a vehicle transporting hazardous wastes off site. The bill also would delete provisions and repeal a section (MCL 324.11132) specifying license application requirements. 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 require a transporter, if transporting by highway, to register and be permitted in accordance with the Hazardous Materials

Transportation Act and carry of a copy of the registration and permit on the vehicle for inspection by the Department of Environmental Quality (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.

## Senate Bill 730

- 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 Act 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 Act, 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 Act 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.

### Vehicles

The bill would delete provisions requiring certain

### Transporters

Part 121 defines "transporter" as a person engaged in the off-site transportation of liquid industrial waste by air, rail, highway, or water. The bill would repeal sections of Part 121 that do the following:

- Require 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 (MCL 324.12104).
- Require the DEQ to deny an application for a liquid industrial waste transporter business license under certain 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.

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 VIII.

### 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 Act 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.
- 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 or a rule referenced by Part 121. A vehicle, equipment, or other property used in violation of Part 121 or a rule 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.

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

"Liquid Industrial Waste"

Legislative Analyst: S. Lowe

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 RJA, 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.

**FISCAL IMPACT**

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

**Senate Bill 731**

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

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 official statement of legislative intent.