

Legislative Analysis



PROHIBIT IMPORTED SOLID WASTE

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House Bill 5176 (Substitute H-1)
Sponsor: Rep. Daniel Acciavatti

House Bill 5177 as introduced
Sponsor: Rep. Phil Pavlov

House Bill 5178 as introduced
Sponsor: Rep. David Palsrok
Committee: Natural Resources, Great Lakes, Land Use, and Environment

First Analysis (9-19-05)

BRIEF SUMMARY: The bills would prohibit the importation of trash from a foreign country, if Congress grants states the authority to do so.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and local governmental units depending on how they affected felony convictions and sentences. Convicted felons may be sentenced to state prison, probation supervision, the county jail, or a combination of jail and probation. Prison and probation costs are borne by the state, and average about \$29,000 per offender per year for prison incarceration and \$1,977 per offender per year for probation supervision. Costs of jailing would be borne by the county, and vary from county to county. Fines would go to local libraries; state-ordered costs go to the state Justice System Fund.

THE APPARENT PROBLEM:

For many years now, environmentalists and policy makers have been concerned with the amount and types of solid waste brought into Michigan landfills from Canada, given the potential impact on the environment and the state's precious natural resources, particularly the Great Lakes. Moreover, in an age of heightened security, there is some concern about the potentially adverse impacts the importation of Canadian trash has on state and federal homeland security efforts.

In the last 10 years, the amount of imported solid waste has increased dramatically, particularly trash imported from Canada. A September 2004 report by the Congressional Research Service reported that in 2003 Michigan was the third largest importer of municipal solid waste, importing more than 4.5 million tons. Nearly two-thirds of that amount is imported from Ontario. According to the Department of Environmental Quality, the amount of Canadian trash imported into the state in FY 2004 increased by about 23 percent from FY 2003 levels, to nearly 12 million cubic yards.

The state's efforts to prohibit the importation of Canadian trash have been restricted by the Commerce Clause of the U.S. Constitution and the U.S. Supreme Court's opinion in

Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources (1992). In *Fort Gratiot*, the Court struck down as being unconstitutional, Public Act 475 of 1988 which, in part, prohibited a person from accepting for disposal solid waste that was not generated within the county, unless accepting such waste was permitted under the county's solid waste management plan. The court held that state provided no legitimate reason for prohibiting such waste other than the fact that it originated outside of the county.

For several years now, legislation permitting states to restrict the importation of imported solid waste has consistently been introduced in Congress. This session, H.R. 2491, introduced by Rep. Paul Gillmor (R-Ohio) and co-sponsored by most of the Michigan delegation, has probably the best chance to date of any legislation to be enacted by Congress. Among other things, the bill would permit states to enact laws or regulations "imposing limitations on the receipt and disposal of foreign municipal solid waste." It has been suggested that the state enact legislation prohibiting imported solid waste from Canada given.

THE CONTENT OF THE BILLS:

Generally speaking, the bills would prohibit the importation of solid waste from a foreign country, if Congress grants states the authority to do so.

House Bill 5176

The bill would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act to prohibit the delivery of municipal solid waste (including municipal solid waste incinerator ash) generated outside of the U.S. to a landfill or incinerator in the state. The owner or operator of a landfill would be prohibited from accepting the foreign waste.

The prohibition would apply only after Congress enacts legislation under Clause 3 of Section 8 of Article 1 of the U.S. Constitution (the Commerce Clause) allowing such prohibitions. The bill would take effect 90 days after (1) the effective date of the federal legislation, or (2) the effective date of the bill, whichever is later.

MCL 324.11526e

House Bill 5177

The bill would amend Part 115 of the Natural Resources and Environmental Protection Act to specify that a violation of HB 5176 would be a felony punishable by imprisonment of up to two years and/or a fine of up to \$5,000. The bill is tie-barred to HB 5176.

MCL 324.11549

House Bill 5178

The bill would amend the sentencing guidelines contained in Chapter XVII of the Code of Criminal Procedure to specify that the importation of solid waste from a foreign country would be a Class G felony against the public safety with a statutory maximum prison sentence of two years. The bill is tie-barred to HB 5177

MCL 777.13c

BACKGROUND INFORMATION:

Federal Legislation

At the federal level, H.R. 2491 would amend the federal Solid Waste Disposal Act (42 USC 6941 et seq.) to permit states to enact a law or issue regulations imposing limitations on the receipt and disposal of foreign municipal solid waste within the state, until the Environmental Protection Agency issues final regulations regarding the implementation of the Agreement Concerning the Transboundary movement of Hazardous Waste between the U.S. and Canada. (The agreement, which was signed in 1986 and later amended in 1992 to add municipal solid waste, governs the trade of hazardous waste and municipal solid waste between the U.S. and Canada.) Laws or regulations enacted before the date the final regulations are established would remain in effect after that date. The bill adds that, “No State action taken as authorized by [the act] shall be considered to impose an undue burden on interstate and foreign commerce or to otherwise impair, restrain, or discriminate against interstate and foreign commerce.”

Previous Legislation

Last session, the legislature and Governor Granholm enacted Public Acts 34 to 44 of 2004, which were aimed at restricting the types of solid waste entering the state from Canada. The acts amended Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act to do the following:

- Authorize the DEQ Director to issue an order restricting or prohibiting the transportation or disposal of solid waste originating within or outside this State, if it poses a substantial threat to the public or the environment.
- Require the DEQ to compile a list of countries, states, provinces, and local jurisdictions that prohibit the disposal of items banned from a Michigan landfill or prevent their disposal through enforceable solid waste disposal requirements.
- Prohibit landfill owners and operators from accepting for disposal out-of-State solid waste unless it comes from a jurisdiction that is on the DEQ list, it comes through a facility that has removed banned items, or it is homogeneous solid waste.
- Ban more than de minimus numbers of beverage containers and whole tires from landfill disposal.

- Require the DEQ and solid waste haulers to give notice of materials banned from landfill disposal and appropriate disposal options.
- Establish a two-year moratorium on the construction of landfills, subject to certain exceptions.
- Require landfill owners and operators to report their remaining disposal capacity each year.
- Require the DEQ, with the State Police, to provide for the inspection of solid waste disposal areas at least four times per year, and allow solid waste management plans to provide for counties and municipalities to assist with inspections.
- Increase the civil fine for repeat violations of Part 115.

The National Solid Wastes Management Association has filed suit in the U.S. District Court, Eastern District of Michigan, challenging the constitutionality of the legislation, contending that it discriminates against out-of-state solid waste, particularly waste originating from Canada, in violation of the Commerce Clause.

Other Legislation

House Democrats have introduced several bills that the caucus claims will stem the flow of imported municipal solid waste into the state. (Others disagree with that contention.) According to a February 2005 press release, the legislation (House Bills 4758 – 4762) would establish a \$7.50 per ton charge (tipping fee) on solid waste entering landfills; create tougher penalties for firms that dump banned and dangerous items; extend the ban on the expansion of Michigan landfills currently set to expire January 1, 2006; and increase enforcement of solid waste violations.

Further Reading

For further information, please see the following publications:

- The Senate Fiscal Agency's January 2005 report entitled, *Disposal of Solid Waste in Michigan Landfills: Imported Waste and Environmental Concerns*, available on the SFA's website at www.senate.michigan.gov/sfa.
- The Congressional Research Service's September 2004 report entitled, *Interstate Shipment of Municipal Solid Waste: 2004 Update*, available through the House Democratic Caucus' website at www.housedems.com/trash1.pdf
- The Department of Environmental Quality's FY 2004 report on solid waste landfilled in Michigan, available at www.deq.state.mi.us/documents/deq-whm-stsw-reportOFsolidwastelandfilled2-22-5.pdf

ARGUMENTS:

For:

The bill takes a simple, straightforward approach to dealing with the problem of Canadian trash being dumped into the state's landfills, by prohibiting such trash if Congress grants the state the authority to do so. Everyday, truckloads of trash cross the border from Canada and present serious problems for the state as it relates to protecting its natural resources, particularly the Great Lakes, and protecting the health, safety, and welfare of its citizens. Moreover, the continued movement of the trash across the border slows traffic and impedes other important commerce.

Against:

Critics say the bill is likely to do nothing to slow the flow of Canadian trash into the state. Congress has been presented with this issue for at least a decade now, and has, to date, never acted upon it. Even if current legislation has a greater chance of passage than earlier legislation, the passage of H.R. 2491 or similar legislation is far from certain and, absent Congressional action, Canadian trash will continue to enter the state unimpeded.

Response:

In contrast to H.R. 2491, previous legislation in Congress would have also restricted the importation of solid waste from other states, as well as Canada. By applying only trash from foreign countries, H.R. 2491 limits its scope, potentially engendering greater support in Congress than before.

Rebuttal:

Currently, H.R. 2491 provides that states may "impose limitations" on the disposal of foreign municipal solid waste. It is not entirely clear if this provision permits states to enact an outright ban on all foreign municipal solid waste. Some people believe House Bill 5176 should be amended to more accurately reflect the language of H.R. 2491 to ensure that it restricts the flow of Canadian trash.

Against:

Critics of this bill assert that other measures (namely the Democrats' package of bills described above) are necessary in order to immediately curb importation of Canadian trash.

Response:

Others contend that the Democrats' plan, particularly the "tipping fee," essentially amounts to a \$200 million tax increase on small businesses and individuals that will do little to stop the importation of trash from Canada, and may very well violate the Commerce Clause and certain international agreements.

POSITIONS:

The Department of Environmental Quality supports the bills. (9-15-05)

The Michigan Townships Association supports the concept of the bills. (9-15-05)

The Michigan Environmental Council opposes the bills. (9-15-05)

Clean Water Action opposes the bills. (9-15-05)

The Michigan Waste Industries Association opposes the bills. (9-15-05)

Republic Waste opposes the bills. (9-15-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.