

Legislative Analysis



RECYCLING FUND DISTRIBUTIONS

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House Bill 5559

Sponsor: Rep. Sarah Roberts

Committee: Great Lakes and Environment

Complete to 11-11-09

A SUMMARY OF HOUSE BILL 5559 AS INTRODUCED 10-28-09

House Bill 5559 describes how revenue to be generated by a \$7.50 per ton surcharge on solid waste sent to landfills and municipal incinerators found in House Bill 5558 would be distributed to the Department of Environmental Quality (DEQ) and local units of government. The DEQ estimates that about \$117.5 million per year would be collected through the \$7.50 per ton surcharge, sometimes referred to as a "tipping fee."

House Bill 5559 and the tipping fee bill, House Bill 5558, both would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act. They are tie-barred to each other, meaning that neither could take effect unless both were enacted. (There is a separate summary available of House Bill 5558.)

Among other things, House Bill 5559 would do the following:

- Create a Recycling Innovation and Market Development Fund from which the DEQ could award grants of up to \$250,000 (up to \$1 million for capital improvements) to public and private entities to develop markets for recycled products and other specified purposes.
- Describe how funds appropriated from the Recycling Fund would be distributed to eligible counties and municipalities (meaning cities, villages, and townships); the DEQ; and the Market Development Fund, in the order and amounts described in the bill.
- Establish criteria for a "benchmark" recycling program, and the deadline by which a municipality with a given population and/or population density would need to have a benchmark program in place to be eligible for certain Recycling Fund distributions.
- Establish a Recycling Advisory Council to make recommendations about recycling programs in Michigan.

FISCAL IMPACT:

A fiscal analysis is in process. The detailed summary provides the dollar distributions.

DETAILED SUMMARY:

Recycling Innovation and Market Development Fund. [§11532c] The bill would create a "Recycling Innovation and Market Development Fund" within the state treasury. [This fund would receive about \$8 million per year through FY 2012 and \$17 million per year

in subsequent years under subdivision (f) of the Recycling fund distribution scheme described below.] Money in this fund at the close of a state fiscal year would not lapse to the General Fund. Upon appropriation, the DEQ could award grants from this fund of up to \$250,000 each (up to \$1 million each if for capital improvements) to private or public entities (1) to expand markets for recycled materials in Michigan; (2) to expand recycling programs to sites other than single-family dwellings; or (3) to expand multi-jurisdictional recycling efforts by authorities established under Public Act 179 of 1947 or Public Act 233 of 1955.

Recycling Fund distribution scheme. [§11532d] Money appropriated from the Recycling Fund would be distributed only as follows by the first day of every third month after the surcharge was initially assessed¹ In addition to other eligibility requirements described below, a local unit of government would have to provide the DEQ with information it considered necessary to determine eligibility to qualify for any of the distributions described below. Funding under this section is intended to be in addition to, and not as a substitute for, revenue sharing or any other statutory or constitutional funding obligations of the state to local units of government. Appropriated funds would be distributed as follows:

Subdivision (a): Counties and municipalities. [Up to \$53 million per year.] Eligible counties and municipalities (cities, villages, and townships) would receive the first \$13.25 million every three months [\$53 million per year]. Of this amount, each eligible county would receive \$6,250 every three months [\$25,000 per year], to offset the cost of meeting the reporting requirements, provided that counties were required under Part 115 of NREPA to report recycling data to the DEQ. [If all 83 counties were eligible for the full \$25,000 annually, \$2.075 million of the first \$53 million would go to counties.]

The remainder of the amount appropriated under subdivision (a) would be distributed to eligible municipalities (cities, villages, and townships) on a per capita basis² for the purposes described in Section 11532e (recycling programs). (As described below, any distribution forfeited by an ineligible municipality would go to the county, if eligible, and to the Market Development Fund, if not.)

Subdivision (b): DEQ. [\$6.65 million per year.] The DEQ would receive the next \$1,662,500 every three months [\$6.65 million per year] for the following purposes: (1) to provide technical recycling assistance, including, but not limited to, gathering and disseminating information useful in developing demand for recycled materials; (2) to administer the Recycling Fund and Sections 11532a to 11532h; and (3) to otherwise administer and enforce Part 115.

¹Although Section 11532d calls for distributions every three months (or quarterly), it was unclear to us whether the dollar figures listed in the subdivisions of this section were intended to represent the total *annual* amounts (to be distributed in three-month allotments) or the amount to be distributed *every three months (or quarterly)*. We have been advised by the bill sponsor's office that the intent is that the amounts listed reflect the amounts to be distributed quarterly so we have reported the amounts that way. We have also converted the quarterly figures to annual amounts shown in brackets.

² Because the bill does not provide otherwise, the most recent federal decennial census figures would likely be used as provided in MCL 8.3v to calculate pro rata shares under the bill.

Subdivision (c): Counties. [\$1.5 million per year.] Counties would receive \$375,000 every three months [\$1.5 million per year] for solid waste planning through an existing solid waste grant program provided for in MCL 324.11547.

Subdivision (d): Municipalities. [\$8 million per year.] Through the state fiscal year ending September 30, 2012, municipalities (cities, villages, and townships) that have operated free curbside recycling (directly or through a contractor) to some or all of its households at least every other week since September 30, 2008, would receive the next \$2 million every three months [\$8 million per year] on a per capita basis. These funds could be used in any way that promotes health, safety, or welfare.

Subdivision (e): Municipalities and Counties. [\$5,000 per year per qualifying recycling drop-off point; unknown total.] Through the state fiscal year ending September 30, 2012, after the distributions described in subdivisions (a) through (d), money appropriated from the Recycling Fund would be distributed to local units of government (municipalities and counties) that have provided free drop-off recycling (directly or through a contractor) since September 30, 2008, in the amount of \$1,250 [\$5,000 per year] per drop-off point maintained since that date. These funds could be used in any way that promotes health, safety, or welfare.

Subdivision (f): Market Development Fund. [\$8 million per year through FY 2012; \$17 million per year in subsequent years with possible additional amounts from subdivision (a) funds forfeited by ineligible municipalities and counties.] Through the state fiscal year ending 2012, after the distributions described in subdivisions (a) through (c), the Market Development Fund would receive the next \$2 million. [\$8 million per year]. In subsequent state fiscal years, this fund would receive \$4.25 [\$17 million per year].

Subdivision (g): Municipalities/Counties. After the distributions in described in subdivisions (a) through (c), and subdivisions (d) and (e), if applicable, and under subdivision (f), any remaining money appropriated from the Recycling Fund would be distributed 85 percent to municipalities (cities, villages, and townships) and 15 percent to counties on a per capita basis. These funds could be used in any way that promotes health, safety, or welfare. A county that failed to report recycling data, if required, would be ineligible for a distribution under this subdivision.

Municipal eligibility for per capita distributions under subdivision (a). [§11532e] To qualify for the per capita distribution described in subdivision (a) during a state fiscal year, a municipality (city, village, or township) would have to submit a form to the DEQ in which the municipality agreed to use the distribution to offset the costs of a recycling program, which could include planning costs. A municipality (except for those with a population of 124,000 or more) would need to have a benchmark recycling program in place by the end of the preceding state fiscal year to qualify for distributions on or after **October 1, 2011**. A municipality with a population of 124,000 or more would need to have a benchmark recycling program in place by the end of the preceding fiscal year to qualify for distributions on or after **October 1, 2012**. In addition, as noted previously, any local unit of government would have to provide the DEQ with information it

requested to determine eligibility to be eligible for any distribution from the Recycling Fund.

Funds forfeited by ineligible municipalities. If a municipality failed to qualify for all or part of a distribution under subdivision (a), the money that would otherwise have gone to that municipality would be distributed to the county. To qualify to receive funds forfeited by a municipality, the county would have to (1) submit a form to the DEQ in which the county agreed to use the distribution somewhere in the county for the same purposes that the municipality could have used the distribution (that is, to offset the costs, including planning costs, of recycling programs); and (2) report recycling data to the DEQ, if required by law to do so. If the county did not qualify for the distribution, the distribution would go to the Market Development Fund.

Benchmark recycling program. [§11532f] A "benchmark recycling program" would mean a recycling and waste diversion program that met all of the following requirements, if applicable:

- Larger **or** more densely populated municipalities (population greater than 10,000 **or** population density greater than 300 per square mile) would need a recycling program that used trucks and related equipment to collect recyclable materials from the curbside or similar locations at least every other week from each household in the municipality, except for those in multifamily dwellings with five or more units. The program would have to collect at least five of the following materials: (1) clear glass, (2) colored glass, (3) aluminum, steel, and bimetallic cans; (4) mixed residential paper; (5) newsprint; (6) corrugated cardboard; (7) magazines; (8) boxboard; (9) HDPE [high density polyethylene] and PETE [polyethylene terephthalate].
- Smaller **and** less densely-populated municipalities (population 10,000 or less **and** a population density of 300 or less per square mile) could either have a program that met the requirements for larger or more densely populated municipalities (that is, a curbside recycling program that met the criteria described above) or, in the alternative, could provide an easily accessible drop-off collection point available to citizens at least 24 hours per week at which at least five of the materials listed above were collected.
- Each municipality would need to have an ordinance requiring persons generating yard clippings and other items banned from landfill to keep those items separated from other solid waste.
- Each municipality would have to conduct a comprehensive and sustained public information and education program concerning recycling program features and requirements that met minimum standards specified in the bill.
- Each municipality would have to adequately document its recycling and waste diversion program.

Recycling Advisory Council. [§11532h] The bill would establish a Recycling Advisory Council within the DEQ to exist through **January 1, 2014**. The council would consist of

the DEQ director (or designee) and representatives of the following: (1) townships; (2) cities and villages; (3) counties; (4) conservation or environmental organizations; (5) business users of recycled glass; (6) business users of recycled plastics; (7) business users of recycled paper; (8) recycling processing facilities; (9) beverage bottlers, wholesalers, and retailers; (10) public landfill operators; (11) private landfill operators; (12) officers or employees of local governmental units, responsible for recycling; (12) private companies providing curbside or drop-off recycling; and (13) the general public.

- Council members would be appointed by the Governor by April 1, 2012, and serve for the life of the council. The Governor would also appoint members to fill vacancies and could remove a member for good cause.
- At its first meeting, called by the DEQ director, the council would elect a chairperson and other officers it considered necessary or appropriate. Thereafter, the council would meet at least quarterly.
- Council business would be conducted in accordance with the Open Meetings Act and its writings would be subject to the Freedom of Information Act.
- Members of the council would serve without compensation, and the DEQ director or designee would not receive any additional compensation for their council service. Council members, however, could receive reimbursement for their actual and necessary expenses incurred in performing their official duties.

Advisory Council Report. By April 1, 2013, the council would have to submit a report to the Governor and Legislature with recommendations for expanding and improving the efficiency of recycling in Michigan, including recommendations concerning:

- Any changes in the distribution formula under subdivision (a) to take effect after September 30, 2014.
- The effectiveness of the grant program established in Section 11532c (the Recycling Innovation and Market Development Fund).
- Any changes in the standards for benchmark recycling programs to take effect after September 12, 2014, including (1) increasing the number of materials collected; (2) requiring the collection of hazardous household waste; (3) requiring a collection program for commercial generators of recyclable solid waste; and (4) requiring a benchmark curbside recycling program to serve multifamily dwellings of five or more units.

Definitions. The bill would make a number of changes to the definition section of Part 115, including the following:

- HDPE and PETE. The bill would define two types of plastics in Part 115 of NREPA—"HDPE" and "PETE"—the same way they are currently defined in Part 161 (Plastic Products Labeling) of NREPA. In Part 161, "HDPE" means "high density polyethylene" and "PETE" means "polyethylene terephthalate."
- Landfill. Under Part 115, "landfill" currently means "a disposal area that is a sanitary landfill." The bill would add to this definition: "However, as used in Section 11532a [the \$7.50 per ton solid waste surcharge to be added by House Bill 5558], landfill does not include a captive facility as defined in Section 11525a." Section 11525 defines "captive facility" as a "landfill that accepts for disposal only nonhazardous

- industrial waste generated only by the owner of the landfill or a nonhazardous industrial waste landfill that is specified in Section 11525(3)" The apparent effect of this change would be to indicate that the \$7.50 per ton solid waste surcharge found in Section 115632a of House Bill 5558 would not apply to captive facilities, including nonhazardous industrial waste landfills specified in Section 11525(3).
- Municipal solid waste incinerator. Under current Section 11504(7), an incinerator does not qualify as a "municipal solid waste incinerator" unless certain requirements are met, including that the incinerator "has established contractual requirements or other notification or inspection procedures" to make sure that the incinerator only burns the types of solid waste that are allowed to be burned in a municipal incinerator. The bill calls for the "person who operates the incinerator" to establish these contractual requirements or procedures. [The definition of "municipal solid waste incinerator" would be renumbered as Section 11504(10).]
 - Scrap wood, treated wood, wood. The bill deletes the existing definitions of "scrap wood," "treated wood," and "wood" currently found in Sections 11502(14)-(16) and reinserts them, renumbered, in alphabetical order later in the definitional sections, in identical form.
 - Trust fund. Likewise, the bill would delete the existing definition of "trust fund" but reinsert it, renumbered, in alphabetical order later in the definitional sections, in nearly identical form.
 - Solid waste; medical waste. The current definitions of the terms "solid waste" and "medical waste" would be slightly revised. The current definition of "solid waste" excludes "medical waste as it is defined in [Part 138 of the Public Health Code] and regulated under [Parts 138 and 55 of the Public Health Code]." Under the bill, "solid waste" would continue to exclude "medical waste" but the references to the Public Health Code would be removed. The term "medical waste," however, is itself defined in Part 115. The definition of "medical waste" would be slightly revised to mean "that term as it is defined in Section 13805 of the Public Health Code, 1978 PA 368, MCL 333.13805."

The current definition of "solid waste" also excludes certain sludges and ashes reused for agricultural or silvicultural purposes or in animal feed. The bill would revise the subdivision dealing with these sludges and ashes, which would remain excluded from the term "solid waste," to clarify that applying these sludges and ashes to land for an approved purpose or using them in animal feed "does not require a plan under this subdivision or a permit or license under [Part 115]" but must be performed in a manner that prevents losses from runoff and leaching.

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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.