



**House  
Legislative  
Analysis  
Section**

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**SOLID WASTE DISPOSAL/LANDFILL**

**Senate Bill 78 (Substitute H-2)**  
**First Analysis (12-7-89)**

**RECEIVED**

**MAR 05 1990**

**Sponsor: Senator Vern Ehlers**

**Senate Committee: Natural Resources and**

**Environmental Affairs**

**House Committee: Conservation, Recreation and  
Environment**

**Mich. State Law Libr**

***THE APPARENT PROBLEM:***

Solid waste has traditionally been disposed of in landfills. In recent years, however, landfills have been found to be unsatisfactory. For example, some landfills have been situated on geographically unsuitable sites, or operated in ways that have resulted in contamination of groundwater, and other health hazards. Even well designed and well managed landfills may eventually leak, and pose a threat of environmental contamination. Although there are provisions in the Clean Michigan Fund Act and the Environmental Response Act that address the problems of landfills, many believe that more long-range solutions are needed and that existing fees charged for disposing of solid waste in landfills do not reflect the eventual costs of landfill closure and cleanup of environmental contamination. It has been suggested that landfill owners be required to set aside funds for long-term maintenance and eventual closure.

***THE CONTENT OF THE BILL:***

Perpetual Care Fund. The bill would amend the Solid Waste Management Act to require a landfill owner or operator to establish and maintain a perpetual care fund. The fund could be established as a trust or an escrow account, and would be used exclusively for the closure, monitoring, and maintenance of the landfill, and for the response activity necessitated by a discharge of a substance that might become harmful to the public health, safety, or welfare, or to the environment.

A landfill owner or operator would be required to deposit in the fund 75 cents for every ton, or portion of a ton, of solid waste disposed of in the landfill after the bill became effective. If the landfill did not have a scale, the fee would be 25 cents for each cubic yard or portion of a cubic yard. If the following materials were disposed of, the fee would be 7.5 cents for each ton or cubic yard, or portion of a ton or cubic yard:

- Coal or wood ash, if disposed of in a landfill used only for the disposal of coal or wood ash, or if permanently segregated in the landfill.
- Wastewater treatment sludge or sediments from wood pulp or paper producing industries, if disposed of in a landfill used only for those materials, or if permanently segregated in the landfill.
- Foundry sand that was designated as inert by the Department of Natural Resources (DNR) and used for daily cover at an operating landfill, or foundry sand that was disposed of in a landfill used only for the disposal of foundry sand, or that was permanently segregated in the landfill.
- For three years after the bill's effective date, organic fruit and vegetable processing waste.

In a landfill used only for the mixture of two or more of the above materials, or for a mixture of two or more that was permanently segregated, the owner or operator would be required to deposit 19 cents for each ton or cubic yard or portion of a ton or cubic yard, after the bill's effective date.

Additional amounts could be contributed to the fund at the owner's or operator's discretion.

The bill would require that the custodian (the trustee, or escrow agent) of the fund be either a bank or financial institution with authority to act as a custodian, and whose account operations were regulated and examined by a federal or state agency. The custodian would be required to invest the fund in time or demand deposits to the extent insured by an agency of the federal government; in direct obligations of the federal government or this state; in obligations where the federal or state government guaranteed the principal and interest; or in a common trust fund or registered mutual fund composed solely of these investments. Earnings would be credited to the fund. The agreement governing the operation of the fund would be executed on a DNR form. Under the bill, the custodian could be compensated for reasonable fees and costs incurred by these responsibilities. The accounts would be kept on a calendar year basis, and the custodian would be required to make an annual accounting to the director within 30 days following the close of the calendar year. The custodian would have the authority to file all required tax returns and to disburse funds from earnings to pay taxes.

Under the bill, requests for disbursement from a fund could not be submitted more than four times a year. No disbursements could be made by the custodian to the landfill owner or operator for the purposes of the fund without the director's prior written approval. Should an owner or operator request a disbursement of funds, the director would be required to grant written approval or denial within 60 days, and the owner or operator would be required to provide the custodian with notice of requests for disbursement and denials and approvals. Should money in a fund fall below the amount required under the act, the director would not be required to approve a disbursement, and the cost of necessary landfill activities would be borne by the owner and operator. The director could require and spend a disbursement of money from a fund, should an owner or operator refuse or fail to conduct these activities, or fail to request a disbursement when necessary.

Thirty years after a landfill had closed, fifty percent of the money remaining in the fund would be deposited in the Environmental Response Fund and fifty percent would be returned to the owner of the disposal area unless a contract between the owner and the operator of the

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disposal area provided otherwise. The owner could also petition the director for approval of disbursement thirty years after the closure of a landfill. The director would be required to approve the disbursement unless it were determined that the owner or operator had refused or failed to conduct the required activities necessary to protect public health. The department could also assess the fund for administrative costs associated with fund activities.

Under the bill, a landfill owner would be required to provide notice to the custodian of a fund of a change of ownership, and the custodian would be required to maintain records of ownership during the lifetime of a fund. Nothing in the bill could be construed to relieve a landfill owner or operator of any liability that he or she might have under the act or as otherwise provided by law.

**Bond Reduction.** Under the act, an applicant for a license to operate a disposal area must file a bond to cover the cost of closure and postclosure monitoring and maintenance. After closure, the applicant for a license for a landfill may annually request a 20 percent reduction in the bond; the applicant for a license for a disposal area that is not a landfill may request a 50 percent reduction. Under the bill, an applicant could request a reduction when applying for a license renewal, and the director would be required to grant this request within 60 days, unless there were sufficient grounds for denial. If the request was granted, the director would require financial assurance in an amount that would make the amount in the fund, plus the amount of the reduced financial assurance, equal to the amount of the bond currently required under the act, plus an additional 20 percent of that amount. The director would be required to release the bond if the amount in the fund exceeded the amount of the original bond. The director could require a corresponding increase in the required bond prior to closure of a landfill, if money were disbursed from the fund.

The bill would take effect 120 days after it was enacted.

MCL 299.403 et al.

### **HOUSE COMMITTEE ACTION:**

The House Conservation and Environment Committee adopted amendments to the bill to make more investment options available to landfill owners by requiring for an "escrow," rather than a "trust" fund. The committee also removed a provision that would have permitted municipalities to impose a surcharge on landfills, a provision that has been included in House Bill 4933, and deleted a provision for a state perpetual care trust fund under the administration of the director of the DNR for the activities at landfills for which trust funds had been established.

### **FISCAL IMPLICATIONS:**

According to the Department of Natural Resources, the bill would have an indeterminate impact on state funds, since 50 percent of the amount remaining in a fund would be deposited in the Environmental Response Fund thirty years after a landfill closed. (12-5-89)

### **ARGUMENTS:**

#### **For:**

There is little disagreement in the scientific community that all landfills eventually leak, and in many cases landfill owners refuse, or the municipality can't afford to pay, the tremendous cleanup cost. Senate Bill 78 would put that

burden on the greatest generators of solid waste, by requiring landfill owners and operators to create and make deposits to a thirty-year perpetual fund. Also, by allowing a trust fund to be used for the response activity necessitated by a discharge from a landfill site, the bill would reduce the burden on the Environmental Response Fund.

#### **For:**

Although owners and operators charge for solid waste deposits in their landfills, those charges reflect only the current operating costs of waste disposal. Neither landfill owners and operators nor anyone else assess or are assessed the inevitable longterm costs inherent in the eventual closure and maintenance of the landfill. As a result, the state — and indirectly the taxpayers — ends up paying for closure and postclosure activities, as well as any additional contamination cleanup. By increasing the cost of using landfills, the bill could serve as a spur to develop landfill alternatives and, as a result, reduce society's dependence on landfills.

**Response:** If the bill is designed in part to modify consumer behavior, it should impose a charge at the beginning of the waste disposal system, that is, at the point of sale. For example, a deposit analogous to the bottle deposit could be imposed on plastic containers, which would keep them out of the waste stream in the first place, or a tax could be added to the sale of tires for their disposal or recycling.

#### **Against:**

A landfill owner should not have to split the balance left in a perpetual fund after thirty years with the Environmental Response Fund. It is the owner who is liable for the landfill during its operation, after its closure, and in the future, so the owner should get it all.

### **POSITIONS:**

The Department of Natural Resources supports the bill. (12-5-89)

The Michigan Waste Industries Association supports the bill. (12-6-89)

The Michigan Environmental Council supports the bill. (12-6-89)

The Michigan Audubon Society supports the bill. (12-6-89)

Public Interest Research Group in Michigan (PIRGIM)

supports the bill. (12-6-89)