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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 78 (Substitute S-1)

Sponsor: Senator Vern Ehlers

Committee: Natural Resources and Environmental Affairs

Date Completed: 5-10-89

SUMMARY OF SENATE BILL 78 (Substitute S-1):

The bill would amend the Solid Waste Management Act to do all of the following:

- Require a landfill owner or operator to establish a perpetual care trust fund for the closure, monitoring, and maintenance of the landfill.
- Require separate trust fund deposits for the disposal of fly ash, bottom ash, wastewater treatment sludge from wood pulp or paper producing industries, foundry sand, and organic fruit and vegetable processing waste.
- Provide for the reduction and release of landfill operating bonds.
- Create the "State Perpetual Care Trust Fund" in the State Treasury and provide for its use.
- Require landfill owners or operators to collect a solid waste surcharge.
- Create the "Landfill Alternatives Research Fund" in the State Treasury and provide for grants and credits from it.

The bill would take effect after 120 days following its enactment.

Perpetual Care Trust Fund

Under the bill, the owner or operator of a landfill would be required to establish a perpetual care trust fund to be used exclusively for closure, monitoring, and maintenance of the landfill. The fund also would be used for "response activity" necessitated by a "discharge" of a substance from the site that could become injurious to the public health, safety, welfare, or environment. ("Discharge" would include but not be limited to spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment that could injure the environment or the public health, safety, or welfare. "Response activity" would mean an activity needed to protect the public health, safety, welfare, and environment. The activity would include but not be limited to evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.)

A landfill owner or operator would be required to deposit in the perpetual care trust fund 75 cents for every ton or portion of a ton of solid waste disposed of in the landfill. If the landfill were not equipped with a scale, the owner or operator would have to deposit in the fund 25 cents for each cubic yard or portion of a cubic yard of solid waste deposited.

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The owner or operator of a landfill that was used for the disposal of the following materials would have to deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard that was disposed of in the landfill:

- Coal or wood ash that was disposed of in a landfill that was used only for the disposal of coal or wood ash or that was permanently segregated in the landfill. ("Coal or wood ash" refers to both inorganic and airborne residue from burning coal or wood, which is otherwise referred to as "bottom ash" and "fly ash".)
- Wastewater treatment sludge or sediments from wood pulp or paper producing industries that were disposed of in a landfill used only for the disposal of that sludge or sediments or that was permanently segregated in the landfill.
- Foundry sand that was designated as inert by the Director of the Department of Natural Resources (DNR) and was used for daily cover at an operating landfill, or foundry sand that was disposed of in a landfill used only for that purpose or that was permanently segregated in the landfill.
- Organic fruit and vegetable processing waste, for three years after the bill's effective date.

An owner or operator of a landfill used only for the mixture of two or more of those materials, or in which such a mixture was permanently segregated, would have to deposit into the trust fund 19 cents for each ton or cubic yard of those materials that was disposed of in the landfill. If the DNR Director determined that a discharge of those materials from a landfill was or could become injurious to the public health, safety, or welfare, or the environment, he or she would have to notify the landfill owner or operator. After such a determination, the owner or operator would have to deposit into the trust fund 75 cents for each ton or cubic yard or portion thereof disposed of in the landfill.

An owner or operator of a landfill could contribute additional amounts into the perpetual care trust fund at his or her discretion. Deposits to the trust fund would not be required for materials that are regulated under Public Act 92 of 1970, which provides for the reclamation of land subject to the mining of minerals.

The trustee of the fund would have to be either a bank or financial institution that had the authority to act as a trustee, with trust operations that were regulated and examined by a Federal or State agency. The trustee would have to invest money in the perpetual care trust fund in time or demand deposits of the trustee or any other financial institution to the extent insured by an agency of the Federal government, in direct obligations of the Federal government, or this State, or in obligations whose principal and interest were unconditionally guaranteed by the Federal government or this State. The trustee would have to make an annual accounting to the DNR Director.

No funds could be disbursed by the trustee to the landfill owner or operator for purposes of the trust fund except with the written approval of the DNR Director. Upon the request of a landfill owner or operator for a disbursement of funds from the trust fund, the Director would be required to grant written approval or issue a written denial within 60 days. If an owner or operator refused or failed to conduct closure, monitoring, maintenance, and response activities as necessary to protect the public health, safety, or welfare, or

the environment, or failed to request a disbursement when necessary for that protection, the Director could require the disbursement and spend the money for closure, monitoring, maintenance, and response activities.

Thirty years after a landfill had been closed, any money in the landfill's trust fund would have to be disbursed to and deposited in the proposed State Perpetual Care Trust Fund.

The bill specifies that its trust fund provisions would not relieve a landfill owner or operator of any liability that he or she could have under the Act or as otherwise provided by law.

Bond Reduction/Release

The Act currently prohibits issuance of a license to operate a disposal area unless the applicant has filed a bond to cover the cost of closure and post-closure monitoring and maintenance; allows a landfill applicant annually to request a 6.6% reduction in the bond after closure; and permits any other applicant to request a 50% reduction. Under the bill, an applicant of a disposal area that was not a landfill could request a 50% reduction. A person required to obtain a bond for a landfill could annually request a reduction in the bond, and the DNR Director would have to grant or deny a request within 60 days. If he or she granted a request, the Director would have to require a new bond in an amount that would make the amount in the perpetual trust fund, plus the amount of the reduced bond, equal the amount of the bond currently required plus 20% of that amount. The Director could release the bond if the trust fund amount exceeded the amount of the original bond. Prior to closure, if money were disbursed from the trust fund, the Director could require a bond or a corresponding increase in the bond required to comply with the amount of the new bond needed under this provision.

State Perpetual Care Trust Fund

The State Treasurer would have to direct the Fund's investment. Interest and earnings would have to be contributed to the Fund, and money in it at the end of a fiscal year would have to remain and could not revert to the General Fund.

Money in the Fund would have to be spent, upon appropriation, by the DNR Director for monitoring, maintenance, and response activities at landfills for which a trust fund had been established. The Director, however, could not spend more at any landfill than the amount the State Fund received from the landfill's trust fund plus accumulated interest and earnings. If all of the available money for a particular landfill were spent, the DNR Director would have to notify the owner or operator, and the owner or operator then would be responsible for the monitoring, maintenance, and response activity costs at that landfill. The bill would not relieve a landfill owner or operator of any liability related to the landfill.

Solid Waste Surcharge

A person who generated solid waste that was disposed of in a landfill would have to pay to the landfill owner or operator a surcharge of \$2 for each ton or portion of a ton disposed of in the landfill. If the landfill did not have a scale, the surcharge would be 75 cents for each cubic yard or portion of a cubic yard.

An owner or operator of a landfill that was used for the disposal of the following materials would have to collect a surcharge of 20 cents for each ton or cubic yard or portion of a ton or cubic yard that was disposed of in the landfill:

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

If the landfill were used only for the disposal of a mixture of two or more of those materials, or in which such a mixture was segregated in the landfill, the owner or operator would have to collect a surcharge of 50 cents for each ton or cubic yard or portion thereof, from those who deposited the wastes.

If the person who deposited the waste were not the generator, he or she could collect the proposed surcharge from the generator of the solid waste.

A landfill owner or operator would have to forward the surcharge amounts collected to the Department of Treasury at the end of each quarter, but could retain 1% of the amount collected as compensation for collecting the surcharge. The Treasurer would have to deposit the solid waste surcharge collections into the Clean Michigan Fund, and deposit the surcharge collections from disposal of coal or wood ash, wastewater treatment sludge or sediments, foundry sand, and organic fruit or vegetable processing waste into the proposed Landfill Alternatives Research Fund.

Materials that are regulated under Public Act 92 of 1970 would be exempt from the surcharge requirement.

Landfill Alternatives Research Fund

The State Treasurer would have to direct the Fund's investment and credit its interest and earnings to the Fund. Money in the Fund at the end of a fiscal year would have to remain and could not revert to the General Fund. Money in the Fund would have to be appropriated to the Natural Resources Commission (NRC) for grants for research into landfill alternatives for coal or wood ash, foundry sand, organic fruit and vegetable processing waste, and wastewater treatment sludge and sediments from wood pulp or paper producing industries.

The NRC, upon the recommendation of the advisory panel created in the Clean Michigan Fund Act (MCL 299.390), would have to do both of the following:

- Award grants to public or private education or research institutions in Michigan.

- Award credit to a person on a dollar for dollar basis against the amount that person owed for landfill disposal surcharges of coal or wood ash, wastewater treatment sludge or sediments, foundry sand, or organic fruit and vegetable processing waste, for contributions the person made to a public or private research institution (or for research the person or his or her employees conducted) for research into landfill alternatives for those materials.

Upon request, the advisory panel would have to advise persons on the types of research projects that would qualify for grants or credits.

MCL 299.403 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact.

There would be the potential for decreased State expenditures for dump or landfill closures. The DNR estimates that it costs an average of \$243,000 to close a dump or landfill. FY 1988-89 Clean Michigan Fund grants include \$806,300 to close two landfills and \$300,000 to build a transfer station to facilitate landfill closure. The proposed FY 1988-89 DNR Solid Waste Bond supplemental appropriation request includes \$21,660,000 to close 90 unlicensed dumps or landfills. Also included in the Bond request is \$10,625,000 to clean up contamination from landfills on the current list of environmental contamination sites pursuant to Public Act 307 of 1982. There could also be an estimated \$800,000 decrease in costs to the State for monitoring and maintaining landfill closures if a portion of the landfill owners' perpetual care trust funds were required for this use by the DNR Director.

There would be indeterminate added costs to State and local government for the payment of 75 cents per ton on government solid waste deposits. There also could be some indirect added costs as solid waste operators passed on their added costs to government depositors.

There would be an indeterminate increase in revenue to the State. With an estimated 12 million tons of solid waste generated each year, the 20-cent to \$2 surcharge would generate an increase in revenue to the Clean Michigan Fund or the Landfill Alternatives Research Fund of between \$2.4 million and \$24 million. The actual revenue would depend on the amount and type of solid waste deposited. Also, some increase in revenue would be anticipated in the event a landfill owner refused or failed to request the disbursement of money from his or her perpetual care trust fund when necessary to protect the public welfare or the environment and the Director required such a disbursement of funds for that protection or for monitoring and maintenance. There would also be indeterminate increased revenues to the State in deposits to the Environmental Response Fund 30 years after the landfills were closed.

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.