Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 756 (as enrolled) **PUBLIC ACT 227 of 1995**
Sponsor: Senator Michael J. Bouchard
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Conservation, Environment and Great Lakes

Date Completed: 1-11-96

## RATIONALE

As part of a package of legislation enacted in 1993-94 to implement the Federal Clean Air Act, Public Act 233 of 1993 made various amendments to the Air Pollution Act. Subsequently incorporated into the Natural Resources and Environmental Protection Act, Public Act 233 included a provision prohibiting the Department of Natural Resources (DNR) from issuing a permit to a municipal solid waste incinerator unless it was located at least 1,000 feet from homes, schools, hospitals, and nursing homes. This provision was to apply only for 21 months after the Act took effect--that is, until December 15, 1995. The provision was designed to address a situation in Madison Heights that was the subject of a decision of the United States Court of Appeals for the Sixth Circuit, which ultimately struck down a municipal ordinance requiring a 900-foot set-back, on the ground that State law preempted local regulation. (For more information about this decision, see BACKGROUND.) Since the December 15 sunset would have eliminated the statutory set-back requirement, it was suggested that this requirement be extended.

## CONTENT

The bill amended the Natural Resources and Environmental Protection Act to extend for four years, until December 15, 1999, provisions that prohibit the DNR from issuing an installation or operating permit to a municipal solid waste incinerator unless it is located at least 1,000 feet from any residential dwelling, public or private elementary or secondary school, preschool facility for infants or children, hospital, or nursing home. (The prohibition does not apply to a municipal solid waste incinerator that existed before June 15, 1993, or to the modification, alteration, expansion, or retrofit of an incinerator after that date.)

The Act had required the DNR, by December 15, 1995, to promulgate rules pertaining to municipal solid waste siting set-backs. The bill, instead, requires the Department to review and study the issue of municipal solid waste siting set-backs and issue a report detailing findings and recommendations to the Legislature within two years after the bill's effective date. Every six months, until the report is completed, the Department must report on the progress of the report to the chairpersons of the Senate and House standing committees that primarily consider natural resources and environmental issues.

(The activities to which the bill pertains now are performed by the Department of Environmental Quality.)

MCL 324.5502

## BACKGROUND

According to the opinion of the U.S. Court of Appeals for the Sixth Circuit in *Southeastern Oakland County Resource Recovery Authority* v *City of Madison Heights* (September 22, 1993), Madison Heights had enacted an ordinance prohibiting the construction or modification of a major emission source, or a solid waste incinerator that would have a major emission source, closer than 900 feet to any residence, school, health care facility, or recreational property. The ordinance was challenged by the Resource Recovery Authority, which had proposed a new facility that would have been within 100 feet of a park, 300 feet of a school, 550 feet of a residential subdivision, and 700 feet of a senior citizens center. The U.S. Court of Appeals upheld a lower court decision granting summary judgment for the

plaintiff. The Court held that the Solid Waste Management Act preempted any local regulation of solid waste disposal facilities. Although the Air Pollution Act did permit local legislation of solid waste incinerators, the Solid Waste Management Act was the more specific of the two laws and therefore prevailed.

## ARGUMENTS

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### Supporting Argument

There is concern that, without a statutory set-back requirement, municipal incinerators could be built excessively close to places where schoolchildren, the elderly, and others live or work. While this is of particular concern in Madison Heights, where a specific incinerator had been proposed, the emissions from municipal incinerators could present health risks to individuals anywhere in the State. Since the U.S. Court of Appeals has held that State law preempts local regulation in this area, it is necessary to have a State statute requiring an incinerator set-back. By extending the set-back for four years, and requiring the Department to perform a study, the bill will enable the State to make an informed decision concerning the need for a set-back to protect the public health.

### Opposing Argument

Reportedly, there is no scientific basis for a set-back requirement. Rather than retaining a blanket set-back for the entire State, the law should permit the Department of Environmental Quality to do its job and evaluate potential sites based on their technical merit, risk factors, topography, impact on the surrounding community, etc. These factors already are considered by the Department during the permit process.

**Response:** The statutory set-back originally was recommended after an examination of the type of equipment involved, the likelihood and consequences of a failure, topography, and nuisance factors, such as fallout and odor. Also, the distance of 1,000 feet is within the 900- to 2,400-foot range recommended by DNR studies in the mid-1980s. This set-back creates a reasonable buffer zone between sites of municipal incinerators and sites of human activity and habitation.

Legislative Analyst: S. Margules

## FISCAL IMPACT

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

Fiscal Analyst: G. Cutler

A9596\S756A