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SFA



BILL ANALYSIS

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Senate Bill 4 (Substitute S-1 as reported)
Sponsor: Senator Loren Bennett
Committee: Natural Resources and Environmental Affairs

Date Completed: 3-5-97

RATIONALE

The Solid Waste Management Act (which was recodified in 1994 as Part 115 of the Natural Resources and Environmental Protection Act) originally was enacted in 1978 to provide for the licensure and regulation of persons and organizations engaged in transporting, processing, or disposing of solid waste. Counties serve as the primary planning units for managing solid waste, and are required to prepare 20-year management plans that address their waste disposal needs and capacity. Amendments adopted in 1988 generally prohibit a person from disposing of waste in a county where the waste was not generated, unless that county's solid waste management plan authorizes the acceptance of that waste. These amendments were the subject of litigation that was resolved by the U.S. Supreme Court in 1992 (*Fort Gratiot Sanitary Landfill, Inc. v Michigan Department of Natural Resources*, 504 US 353; 112 S Ct 2019). The Court held that the 1988 "...Waste Import Restrictions unambiguously discriminate against interstate commerce and are appropriately characterized as protectionist measures that cannot withstand scrutiny under the Commerce Clause".

Although a county may not constitutionally refuse to accept solid waste simply because it was generated outside of Michigan, the "Waste Import Restrictions" remain in the statute, and the Michigan Court of Appeals held in 1995 that the invalid application of those amendments can be severed from the remainder of the Act (*Citizens for Logical Alternatives and Responsible Environment v Clare County Board of Commissioners*, 211 Mich App 494). Despite the U.S. Supreme Court ruling, many people believe that Michigan should be able to limit the importation of out-of-state waste, at least to the extent permitted by Federal law. It has been suggested that statutory language to this effect would set the stage for State regulation in the event of Congressional action, and could bring the

issue to the attention of Federal legislators.

CONTENT

The bill would amend Part 115 of the Natural Resources and Environmental Protection Act to prohibit solid waste haulers from transporting or disposing of within this State solid waste that was generated outside of the State. The bill also would prohibit solid waste disposal areas from accepting for disposal solid waste that was generated outside of Michigan. These prohibitions would not apply, however, unless the U.S. Congress enacted authorization for the states to regulate the transportation and disposal of solid waste, and would apply only to the extent and in a fashion authorized by Federal law.

Proposed MCL 324.11514a

BACKGROUND

The sections of the Natural Resources and Environmental Protection Act that contain the 1988 Waste Import Restrictions are as follows:

Sec. 11513. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan...

Sec. 11515... (6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county...

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

Michigan should stop being a dumping ground for garbage generated in other states and Canada. In the 1995-96 fiscal year, Michigan landfills accepted 42.4 million cubic yards of solid waste, which included 5.7 million cubic yards of out-of-state waste, according to figures of the Department of Environmental Quality. In addition, the amount imported from Canada might be expected to increase, since the Metro Toronto council recently awarded a multimillion dollar contract to Browning-Ferris Industries to haul the region's garbage to the Arbor Hills landfill in Washtenaw County, according to an article in the *Lansing State Journal* (2-24-97). Although this State presently cannot regulate or prohibit the disposal in Michigan of out-of-state waste, the bill would enable the State to refuse out-of-state waste at the borders if Congress acted to permit the interstate regulation of waste transfers. While the bill would apply only to the extent allowed by Federal law, in the meantime it would place specific prohibitions on the books and could bring the attention to Federal decision-makers.

Response: By enacting an outright ban on the disposal in Michigan of out-of-state waste (to the extent authorized by Federal law), the bill could undermine the ability of individual counties to accept out-of-state waste. Under the Waste Import Restrictions in current law, county plans may specifically permit imported waste.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on State government, and an indeterminate fiscal impact on local governments that charge a fee for solid waste disposed of in their jurisdiction.

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.