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SFA



BILL ANALYSIS

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Senate Bill 140 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Walter H. North
Committee: Agriculture and Forestry

Date Completed: 3-4-97

RATIONALE

Wastewater discharged from homes and businesses in most communities in the State generally drains to wastewater treatment plants where the sewage and water are separated. The water, then, is purified and discharged into a local river, stream, or other body of water. The remaining sewage is treated to remove or reduce disease-causing bacteria. When applied on land, treated sludge is beneficial to the soil because it improves the tilth, adds organic matter, and contributes nutrients, according to the Department of Environmental Quality (DEQ). If the sewage sludge is not applied as fertilizer, local governments must either deposit it in a landfill or incinerate it. The treatment of wastewater and land application of sewage sludge is governed by Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act. According to the DEQ, however, that program is not operational due to a lack of staff. Consequently, the application of these biosolids is regulated under a program administered by the U.S. Environmental Protection Agency (EPA). Some people believe that the Federal program is not being enforced consistently and that the State should seek delegation of that program.

- **Require sewage sludge generators and distributors to report annually to the DEQ on the amount of sludge generated or distributed and applied to the land in the State fiscal year.**
- **Create the "Sewage Sludge Land Application Fund" to be used for administration of the bill, including education about the land application of sewage sludge.**
- **Specify that the bill would preempt a local ordinance, regulation, or resolution that duplicated, extended, or conflicted with the bill's provisions, but allow a local unit to enact a more stringent ordinance if certain requirements were met.**
- **Require the DEQ to hold a public meeting if a local government submitted a resolution identifying how the requirements for a local ordinance were met.**

Rules

By October 1, 1997, the DEQ in consultation with the Department of Agriculture would have to promulgate rules to manage the land application of sewage sludge. The rules would have to be consistent with minimum requirements of Federal rules on the standards for land application of sewage sludge, but could impose requirements in addition to or more stringent than the Federal rules to protect the public health or the environment from any adverse effect from a pollutant in sewage sludge. ("Sewage sludge" would mean sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.)

CONTENT

The bill would amend Part 31 of the Natural Resources and Environmental Protection Act to:

- **Require the Department of Environmental Quality (DEQ), by October 1, 1997, to promulgate rules on the land application of sewage sludge.**
- **Impose on sewage sludge generators and distributors an annual sewage sludge land application fee beginning in State fiscal year 1998.**

Application Fee

Beginning in State fiscal year 1998, an annual sewage sludge land application fee would be imposed on sewage sludge generators and distributors. ("Sewage sludge generator" would mean a person who generated sewage sludge that was applied to land. "Sewage sludge distributor" would mean a person who applied, marketed, or distributed, except at retail, a product for land application derived from sewage sludge.) The application fee would have to be in an amount equal to the sum of a \$400 administrative fee and a generation fee set by the DEQ. The Department would have to set the generation fee so that the annual cumulative total of the sewage sludge land application fee to be paid in a State fiscal year would be, as nearly as possible, \$650,000 minus the amount in the Sewage Sludge Land Application Fund carried forward from the prior State fiscal year. Starting with fees to be paid in State 1999, the \$650,000 would have to be adjusted annually for inflation using the Detroit Consumer Price Index.

Each sewage sludge generator and sewage sludge distributor would have to report annually to the DEQ for each State fiscal year, beginning with the 1997 State fiscal year, the number of dry tons of sewage sludge it generated or distributed that was applied to land in that State fiscal year. The DEQ would have to determine the generation fee on a per dry ton basis by dividing the cumulative generation fee by the number of tons of sewage sludge applied to land in the immediately preceding State fiscal year. The Department would have to notify each sewage sludge generator and distributor of the generation fee on a per dry ton basis. For the 1998 State fiscal year, the generation fee could not exceed \$4 per dry ton.

By January 31 of each State fiscal year, each sewage sludge generator or distributor would have to pay its sewage sludge land application fee. The sewage sludge generator or distributor would have to determine the amount of its sewage sludge land application fee by multiplying the number of dry tons of sewage sludge applied to land that it reported to the DEQ by the generation fee and adding the administrative fee.

The DEQ would have to assess interest on all fee payments submitted after the due date. The permittee would have to pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remained past due. A person's failure to pay a fee on time would be a violation of Part 31.

Sewage Sludge Land Application Fund

The Sewage Sludge Land Application Fund would be created in the State Treasury. The DEQ would have to forward all fees collected under the bill to the State Treasurer for deposit into the Fund. The State Treasurer could receive money or other assets from any source for deposit into the Fund, would have to direct the Fund's investment, and would have to credit to the Fund interest and earnings from Fund investments. An unspent balance within the Fund at the close of the State fiscal year would have to be carried forward to the following State fiscal year.

The Fund would have to be allocated solely for administration of the bill, including, but not limited to, education of the farmers, sewage sludge generators and distributors, and the general public about land application of sewage sludge and the bill's requirements. The DEQ Director could contract with a nonprofit educational organization to administer the bill's educational components. The bill would require that 10% of the Fund be allocated to the Department of Agriculture to provide education and technical assistance relating to land application of sewage sludge to persons involved in or affected by that application.

Enforcement/Local Regulation

The bill specifies that its provisions concerning the land application of sewage sludge and the proposed fees would preempt a local ordinance, regulation, or resolution of a local unit that would duplicate, extend, revise, or conflict with the bill's provisions. Except as otherwise provided, a local unit could not enact, maintain, or enforce an ordinance, regulation, or resolution that duplicated, extended, revised, or conflicted with the bill. ("Local unit" would mean a county, city, village, or township or an agency or instrumentality of any of these entities.)

The DEQ Director could contract with a local unit to act as its agent for the enforcement of the bill. The Department would have the sole authority to assess fees. If a local unit were under contract with the DEQ to act as its agent or the local unit had received prior written authorization from the Department, the local unit could pass an ordinance that was identical to the bill and rules promulgated under it, except as prohibited in the bill.

A local unit could enact an ordinance prescribing standards that were in addition to or more stringent than those contained in the bill and that regulated

a sewage sludge land application site under either or both of the following circumstances:

- The operation of a sewage sludge land application site within that local unit would result in unreasonable adverse effects on the environment or public health within the local unit. The determination that unreasonable adverse effects would exist would have to take into consideration specific populations whose health could be adversely affected within the local unit.
- The operation of a sewage sludge land application site within that local unit had resulted or would result in the local unit's being in violation of other existing State or Federal laws.

An ordinance that was the same as or more stringent than the bill could not conflict with existing State or Federal laws. A more stringent ordinance could not be enforced by a local unit until approved or conditionally approved by the DEQ Director. The local unit would have to comply with any conditions of approval.

If the legislative body of a local unit submitted to the DEQ a resolution identifying how the requirements for a more stringent local ordinance would be met, the Department would have to hold a public meeting in the local unit within 60 days after the submission of the resolution to assist the DEQ in determining whether the requirements were met. Within 45 days after the public meeting, the Department would have to issue a detailed opinion on whether the requirements were met as identified by the resolution, and would have to approve, conditionally approve, or disapprove the ordinance accordingly.

MCL 324.3101 et al.

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

The application on farmland of treated sewage sludge is a preferred method of disposing of this material, since using it as a fertilizer provides for the recycling of organically rich biosolids back into the environment. Otherwise, this material would have to be deposited in a landfill, incinerated, or disposed of in another manner that could threaten the environment and public health, and would be more expensive than land application. Federal rules established by the EPA govern the treatment of this sewage so that proper levels of various organic and inorganic matter, as well as other substances, are attained before the material can be applied to the land. The DEQ also works with sewage sludge generators and landowners to ensure the proper application of this material. The DEQ, however, does not have the resources needed to operate a program, and the EPA's involvement is hindered because its regional office in Chicago is not in close proximity to the State. Consequently, regulation and enforcement vary at the Federal, State, and local levels. The bill would provide for the State, instead of the Federal government, to administer the sewage sludge program by requiring the DEQ to promulgate rules on the land application of this sludge, and imposing an annual fee on sewage sludge operators and distributors. The fee would generate revenue for the program's administration, including educational programs about land application of sewage sludge.

Response: As a result of the bill, sewage sludge generated by municipal wastewater treatment plants could be applied to land located in townships. Currently, municipal wastewater treatment facilities are not required to treat septage waste produced by septic tank systems located in rural areas, such as townships. If townships would be required to accept this municipal sewage sludge under the bill, then municipal treatment facilities should be required to treat septage waste from septic tanks located in townships.

Opposing Argument

The Federal program apparently allows local communities to pass ordinances on sewage sludge application that are more stringent than Federal regulations. The bill would allow a local unit to enact a more stringent ordinance if certain requirements were met, but would preempt a local ordinance, regulation, or resolution that duplicated,

extended, or conflicted with the bill. Under the bill, local governments would lose control over the regulation of sewage sludge application in their communities. For example, a township could not enact an ordinance prohibiting the application of sewage sludge on land in the township. Although sewage sludge can be an effective fertilizer, improper application of the material on the land can result in odors and attract various pests and insects. Local governments and their residents, not the State, should decide whether this material should be used as fertilizer on land in their community.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill is designed to generate approximately \$650,000 in State revenue to be deposited into the "Sewage Sludge Application Fund".

The bill designates that 10% of the Fund would be appropriated to the Department of Agriculture. The remainder would be used by the Department of Environmental Quality to administer the bill or would be carried forward to the next fiscal year.

The proposed FY 1997-98 DEQ appropriations bill (S.B. 167) includes \$650,000 in revenue and 2.0 FTEs for this program.

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.