

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 140 (as enrolled)
Sponsor: Senator Walter H. North
Senate Committee: Agriculture and Forestry
House Committee: Conservation, Environment and Recreation

PUBLIC ACT 29 of 1997

Date Completed: 9-12-97

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 are governed by Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act. According to the DEQ, however, that program has not been 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.

land application fee beginning in State fiscal year 1998.

- Require sewage sludge generators and distributors to report annually to the DEQ on the amount of sludge generated or distributed and applied to 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 or sewage sludge derivatives.
- Specify that the bill preempts a local ordinance, regulation, or resolution that duplicates, extends, or conflicts with the bill's provisions, but allow a local unit to enact a more stringent ordinance if certain requirements are met.
- Require the DEQ to hold a public meeting if a local government submits a resolution identifying how the requirements for a local ordinance will be met.

Rules

By October 1, 1997, the DEQ in consultation with the Department of Agriculture must promulgate rules to manage the land application of sewage sludge and sewage sludge derivatives. The rules must be consistent with minimum requirements of Federal regulations on the standards for land application of sewage sludge, but may 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 or in a sewage sludge derivative. The rules, however, must provide that if monitoring of sewage sludge or a sewage sludge

CONTENT

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

- **Require the Department of Environmental Quality, by October 1, 1997, to promulgate rules on the land application of sewage sludge and sewage sludge derivatives.**
- **Impose on sewage sludge generators and distributors an annual sewage sludge**

derivative indicates an excessive pollutant concentration, as specified in Federal regulations, monitoring frequency must be increased to at least twice that provided in Federal regulations, until pollutant concentrations are at or below the Federal levels.

The rules also must require a sewage sludge generator or distributor to deliver to a county, city, village, or township a copy of any record required to be created under the rules pertaining to sewage sludge or a sewage sludge derivative applied to land in that local unit. The copy must be delivered free of charge promptly after the record is created. ("Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste. "Sewage sludge derivative" means a product for land application derived from sewage sludge that does not include solid waste or other waste regulated under the Act.)

The bill specifies that if the Michigan Supreme Court rules that provisions in the Administrative Procedures Act on the adoption and promulgation of rules are unconstitutional and a statute requiring legislative review of administrative rules is not enacted within 90 days of the Court ruling, the rule-making authority under the bill and any rules promulgated under it are rescinded and the land application of sewage sludge must be managed by the DEQ in consultation with the Department of Agriculture consistent with the requirements of Federal regulations.

Application Fee

Beginning in State fiscal year 1998, an annual sewage sludge land application fee will be imposed on sewage sludge generators and distributors. ("Sewage sludge generator" means a person who generates sewage sludge that is applied to land. "Sewage sludge distributor" means a person who applies, markets, or distributes, except at retail, a product for land application derived from sewage sludge.) The application fee must be in an amount equal to the sum of a \$400 administrative fee and a generation fee set by the DEQ. The Department will 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 is, 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 fiscal year 1999, the \$650,000 will have to be adjusted annually for inflation using the Detroit Consumer

Price Index.

Each sewage sludge generator and sewage sludge distributor must 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 the number of dry tons of sewage sludge in sewage sludge derivatives it distributed that were applied to land in that State fiscal year. By December 15 of each State fiscal year, the DEQ must determine the generation fee on a per dry ton basis by dividing the cumulative generation fee by the number of tons of sewage sludge or in sewage sludge derivatives applied to land in the immediately preceding State fiscal year. The Department must 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 may not exceed \$4 per dry ton.

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

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

Sewage Sludge Land Application Fund

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

The Fund must 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 sewage sludge derivatives, and the bill's requirements. The DEQ Director may contract with

a nonprofit educational organization to administer the bill's educational components. The bill requires 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 or sewage sludge derivatives to persons involved in or affected by that application.

Enforcement/Local Regulation

A local unit may enact, maintain, and enforce an ordinance that prohibits the land application of sewage sludge or a sewage sludge derivative if monitoring indicates a pollutant concentration exceeding concentrations specified in Federal regulations until subsequent monitoring indicates that pollutant concentrations do not exceed those specifications.

The bill specifies that its provisions concerning the land application of sewage sludge and the application fees preempt a local ordinance, regulation, or resolution of a local unit that duplicates, extends, revises, or conflicts with the bill's provisions. Except as otherwise provided, a local unit may not enact, maintain, or enforce an ordinance, regulation, or resolution that duplicates, extends, revises, or conflicts with the bill. ("Local unit" means a county, city, village, or township or an agency or instrumentality of any of these entities.)

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

A local unit may enact an ordinance prescribing standards that are in addition to or more stringent than those contained in the bill and that regulate a sewage sludge or sewage sludge derivative land application site under either or both of the following circumstances:

- The operation of a site within that local unit will result in unreasonable adverse effects on the environment or public health within the local unit. The determination that unreasonable adverse effects will exist must take into consideration specific populations whose health may be adversely affected within the local unit.
- The operation of a site within that local unit has resulted or will result in the local unit's

being in violation of other existing State or Federal laws.

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

If the legislative body of a local unit submits to the DEQ a resolution identifying how the requirements for a more stringent local ordinance will be met, the Department must 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 are met. Within 45 days after the public meeting, the Department must issue a detailed opinion on whether the requirements are met as identified by the resolution, and must approve, conditionally approve, or disapprove the ordinance accordingly. If the Department fails to satisfy these requirements, the ordinance is considered to be approved.

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 must be deposited in a landfill, incinerated, or disposed of in another manner that may threaten the environment and public health, and is 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 land. The DEQ also works with sewage sludge generators and landowners to ensure the proper application of this material. The DEQ, however, has not had the resources needed to operate a program, and the EPA's involvement has been 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 provides 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 will 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 may 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 are 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 allows a local unit to enact a more stringent ordinance if certain requirements are met, but preempts a local ordinance, regulation, or resolution that duplicates, extends, or conflicts with the bill. Under the bill, local governments will lose control over the regulation of sewage sludge application in their communities. For example, a township may 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 land may 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 must be appropriated to the Department of Agriculture. The remainder will be used by the Department of Environmental Quality to administer the bill or will be carried forward to the next fiscal year.

The FY 1997-98 DEQ appropriations 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.