

Senate Fiscal Agency
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Senate Bill 550 (as enrolled)
Sponsor: Senator Ken Sikkema
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Conservation and Outdoor Recreation

PUBLIC ACT 196 of 1999

Date Completed: 1-18-00

RATIONALE

The Natural Resources and Environmental Protection Act (NREPA) holds waste generators liable for releases that result from the waste materials they generate. In order to provide an incentive for companies to recycle secondary materials, Public Act 71 of 1995 amended the NREPA to exclude from liability for cleanup costs persons who arranged the sale or transport of a secondary material, provided that the material had been separated or removed from the solid waste stream for reuse or recycling, and substantial amounts of the material were consistently used in the manufacture of products that could otherwise be produced from a raw or virgin material. Public Act 71, however, did not specify that the recycling activities had to occur on or after June 5, 1995, when Public Act 71 took effect. Therefore, according to the Department of Environmental Quality (DEQ), some companies have applied the law retroactively to recycling activities that occurred before the exemption took effect. Since the exemption was designed to promote *future* recycling of secondary materials, according to the DEQ, it was suggested that the State should be able to recover response activity costs incurred before the effective date of the exemption.

CONTENT

The bill amended Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act to provide an exemption from liability for cleanup costs for a person who, on or after June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product; as well as a person who, before June 5, 1995, arranged for the sale or transport of a secondary material, unless the State incurred response activity costs associated with these secondary materials before the bill's effective date.

"Secondary material" means scrap metal, paper,

plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

MCL 324.20126

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 bill enables the State to recover response activity costs associated with the improper management of a secondary material. According to the DEQ, an Alpena-based scrap metal facility caused serious environmental contamination in the late 1980s and early 1990s when it illegally burned lead coating off wire and drained battery acid onto the ground. Several companies that had sent batteries and coated wire to the site have claimed an exemption from liability under the provisions of Public Act 71, since the wire was intended to be recycled once the coating was removed. According to the DEQ, these companies are liable for cleanup costs since they did not exercise appropriate measures to assure that the secondary materials were recycled lawfully, and the contamination occurred before June 5, 1995. The bill should help the DEQ recover the response activity costs incurred to clean up the site.

Opposing Argument

The bill will retroactively impose liability on manufacturers, small businesses, and individuals and put recycling businesses at an unfair disadvantage. The exemptions were designed to

protect recyclers, not penalize them.

Legislative Analyst: N. Nagata

FISCAL IMPACT

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

Fiscal Analyst: P. Graham

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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.