

# Legislative Analysis

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## RECYCLING COORDINATOR & ADVISORY COUNCIL

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**Senate Bill 790 (Substitute H-1)**

**Sponsor: Sen. Cameron S. Brown**

**Senate Bill 854 (Substitute S-2)**

**Sponsor: Sen. Patricia L. Birkholtz**

**House Committee: Land Use and Environment**

**Senate Committee: Natural Resources and Environmental Affairs**

**First Analysis (11-29-04)**

**BRIEF SUMMARY:** The bills would create a Recycling Advisory Council within the Department of Environmental Quality, and establish in statute the position of Statewide Recycling Coordinator.

**FISCAL IMPACT:** Senate Bill 790: The Department of Environmental Quality would be required to provide financial support to the new Recycling Advisory Council. In addition to the expenses of the Statewide Recycling Coordinator (established through SB 854), the department may need an additional appropriation of \$5,000 to support the activities of this council. There would be no fiscal impact on local governmental units.

Senate Bill 854: The Department of Environmental Quality would need an additional \$60,000 to hire the Statewide Recycling Coordinator provided for in this bill. There would be no fiscal impact on local governmental units.

### **THE APPARENT PROBLEM:**

The Michigan Beverage Container and Recycling Task Force was commissioned in January 2003 by Senate Majority Leader Ken Sikkema to review the state's current recycling programs and evaluate the effect of Michigan's beverage container law, or "bottle bill," on statewide recycling and the environment. The task force held nine public hearings around the state to determine, among other things, whether the bottle bill should be expanded to include deposits on noncarbonated beverage containers, such as water, juice, and sports drink bottles. The hearings also addressed issues related to preventing litter and promoting recycling.

In September 2003, the task force issued a report and made a number of recommendations. The task force found there is popular support for expanding the "bottle bill" to include noncarbonated beverage containers. However, the task force concluded: "The system must be fixed to provide a more stable foundation before expansion can be advanced."

In regard to recycling, the task force recommended the state take certain actions, including establishing a statewide Recycling Advisory Council. The task force also recommended that the council and the statewide recycling coordinator (a position within the Department of Environmental Quality) work together to review the state's recycling and waste diversion programs, and develop ways to expand them while ensuring greater efficiency.

### ***THE CONTENT OF THE BILLS:***

Senate Bills 790 and 854 would create a Recycling Advisory Council within the Department of Environmental Quality, and establish in statute the position of statewide recycling coordinator (a position currently filled in the DEQ). The two bills are tie-barred, meaning neither could take effect unless both were enacted. A more detailed explanation of each bill follows.

House Bill 790 (H-1) would add Part 173 to the Natural Resources and Environmental Protection Act (MCL 324.17301-17303) to establish the Recycling Advisory Council within the Department of Environmental Quality (DEQ). The council would have to do the following, among other things:

- Study and report to the legislature on the costs associated with, and sources of funding for, new and existing recycling and waste diversion programs.
- Establish goals for the diversion of waste from landfills in the state.
- Conduct a cost-benefit analysis of expanding the scope of the beverage container deposit law.
- Recommend to the legislature changes to the state's comprehensive recycling plan, tax incentives to encourage recycling, and measures to foster the development of markets for recycled materials, and make other recommendations.

Council Membership. The Recycling Advisory Council would consist of the DEQ director, or his or her designee; five members appointed by the Senate Majority Leader; five members appointed by the Speaker of the House; and five members appointed by the governor.

The Senate Majority Leader would have to appoint one member representing each of the following: a beverage dealers' organization; a statewide business organization; a recycling business; a statewide bottlers' organization; and a statewide conservation organization. The Speaker of the House would have to appoint one member representing each of the following: a beverage distributors' organization; a manufacturer that uses raw material consisting primarily of recycled material; an organization of townships; and the waste management industry. The governor would have to appoint one member representing each of the following: a statewide environmental organization; county government; an officer or employee of a local unit of government responsible for

recycling in that local unit; a member of the public at large; and a representative of a college or university that operated a comprehensive, institution-wide recycling program.

The members first appointed to the council would have to be appointed by the political leaders within 30 days after the bill's effective date. Members would serve for two-year terms or until a successor was appointed, whichever was later. A vacancy on the council would have to be filled for the unexpired term in the same manner as the original appointment. The respective leaders could remove members they appointed for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause. The council members would serve without compensation.

Organization. The DEQ director would have to call the first council meeting. At that meeting, the council would have to elect from among its members a chairperson and other officers it considered necessary or appropriate. The council then would have to meet at least quarterly, or more frequently at the call of the chairperson, or if requested by three or more members.

A majority of the members would constitute a quorum for the transaction of business at a council meeting, and a majority of the members present and serving would be required for official council action. The council would be subject to the Open Meetings Act and the Freedom of Information Act.

The DEQ would have to provide staff to the council through the Office of the Statewide Recycling Coordinator. (The position of Statewide Recycling Coordinator currently exists in the DEQ, and Senate Bill 854 would create the office in statute.) The departments and agencies of state government would have to cooperate with the council by providing information it requested for the purposes of discharging its responsibilities.

Initial Recommendations. The council would have to study and, by September 1, 2005, make recommendations to the legislature about all of the following: a) the effectiveness of the state's current recycling program and what opportunities exist to improve recycling; b) the current amount of public and private funding for recycling by local government and nonprofit organizations, and the relationship of the current funding levels to the efficiency and effectiveness of the program; c) the amount of public and private funding required to improve recycling efficiency and effectiveness in rural areas; d) the amount of public and private funding required to improve recycling efficiency and effectiveness in urban areas; e) after thoroughly evaluating the sustainability, efficiency, and effectiveness of all funding options that produce an increase in recycling levels, all known sources of potential funding for recycling; f) an initial method for distribution of money to be realized from those sources; and g) criteria for local recycling programs to qualify for funding of recycling and waste diversion .

After making its recommendations to the legislature, the council would have perform, on an ongoing basis, the duties described below.

Waste Diversion and Recycling. The council would have to a) recommend to the legislature changes in the state's comprehensive recycling plan; b) in conjunction with the statewide recycling coordinator, establish a method for the regular review of local recycling programs to gather information about processes, markets, and recycling rates; c) in conjunction with the DEQ, develop forms and requirements for reporting expenditures for waste diversion, including expenditures of money received from the DEQ for recycling and waste diversion, and waste diversion and recycling accomplished by counties, solid waste management planning agencies, and entities that received money from the DEQ for recycling and waste diversion; d) review data regarding waste diversion and recycling, and use the data to establish criteria for and make recommendations to the department and the legislature on changes to the expenditure of money for recycling and waste diversion; f) make recommendations to the legislature on Single Business Tax incentives to encourage development of markets for recycling materials that face obstacles or challenges to development, including but not limited to electronic goods, batteries, and colored glass; g) recommend to the legislature for enactment into law both reasonable, quantifiable short-term and long-term recycling recovery and waste diversion objectives and measures to develop or foster the development of markets for recycled materials; h) review with local recycling officials current local recycling funding programs to determine if any changes should be made in these programs; i) based on the recycling coordinator's study and the department's report, recommend a strategy for a phased implementation of bans of additional materials from landfills; j) in cooperation with the DEQ's Office of Environmental Assistance and the Michigan Economic Development Corporation, encourage firms that specialize in production of products from recycled materials to establish business operations in the state; k) examine manufacturing processes that incorporate equipment or other technology to utilize recycled materials or to allow for the recycling of waste products; and, l) review all of the state's relevant solid waste management laws and administrative rules related to recycling and recommend to the legislature or state agencies changes to promote recycling and waste diversion.

Bottle Deposit Law. In addition, the council would have to conduct a cost-benefit analysis of expanding the scope of the Initiated Law of 1976 (the beverage container deposit law), compared with alternative ways to increase recycling; report to the legislature the council's recommendations on changing the law; assess and report on health and safety concerns arising from the storage and handling by dealers and distributors of returned beverage containers; review the apportionment of the Unclaimed Bottle Deposit Fund and recommend to the legislature revisions to compensate distributors and dealers more fully for their costs; create a sub-council to monitor implementation of the pilot program for regional beverage container redemption centers, and to monitor the success of the Initiated Law of 1976; and evaluate the sustainability, effectiveness, and efficiency of pay-as-you-throw programs that have been implemented and determine whether incentives should be established to encourage the programs.

Senate Bill 854 (S-2) would add Part 174 to NREPA (MCL 324.17401-17403) to establish the Office of Statewide Recycling Coordinator in the Department of Environmental Quality. The DEQ director would have to appoint the statewide recycling

coordinator, who would serve at the director's pleasure. The director would have to determine the coordinator's compensation, and the coordinator would have to be reimbursed for all traveling and other expenses incurred in the discharge of official duties. As recommended by the coordinator, the DEQ could employ assistants and make expenditures necessary to implement Part 174 and perform the powers and duties of statewide recycling coordinator.

The coordinator would have to do all of the following:

- Establish a method for regular review of local recycling programs in the state, in conjunction with the Recycling Advisory Council (proposed by Senate Bill 790).
- Gather information about recycling processes, markets, and rates.
- Conduct and submit a study of the state's capacity to handle material recovered for recycling, the feasibility of collecting and transporting material for recycling in the state, and the ability of the state to sustain markets for products containing recycled content (as required by the legislature).
- Submit recommendations for improving and expanding recycling in the state (as required by the Legislature).
- Perform any other duties imposed by law or requested by the director.

#### ***HOUSE COMMITTEE ACTION:***

The House Committee on Land Use and Environment reported out an H-1 substitute version of Senate Bill 790. However, that bill appears identical to the Senate-passed version of the bill, Substitute S-6.

With regard to Senate Bill 854, the committee reported out the Senate-passed version of the bill, Substitute S-2, without any amendments.

Some of the information in this analysis is derived from the analyses by the Senate Fiscal Agency of Senate Bill 790 dated 7-19-04 and of Senate Bill 854 (as part of a 10-bill littering and recycling package) dated 1-14-04.

#### ***ARGUMENTS:***

##### ***For:***

The bill would implement several recommendations of the Michigan Beverage Container and Recycling Task Force, most significantly the establishment of a Recycling Advisory Council. Such a council would provide a stable, consistent body that could recommend recycling policies. Michigan lacks a consistent approach to recycling and has no statewide recycling goals (except those for state government, which evidently have been neglected.) The council would represent a fair cross-section of interested parties,

including conservation and environmental groups, townships and counties, beverage dealers, and the general public.

Under the bill, the council would be charged with establishing goals for the diversion of waste from landfills, could recommend statewide recycling rates that were financially feasible, and would have to establish a method for monitoring local recycling programs. Further, the bill would require the council to recommend to the legislature tax incentives to encourage the development of new markets for recycled materials. The council also would work to encourage firms that use recycled materials to locate in Michigan. Finding markets for recycled materials is a significant, often-overlooked step that must occur before recycling can increase.

In sum, the Recycling Advisory Council could generate creative, long-term solutions to Michigan's solid waste challenges.

***For:***

The bill would require the council to conduct a cost-benefit analysis of expanding the scope of the bottle deposit law and then provide recommendations on changes to the law. It is vital that a thorough study be conducted before the law is expanded to include juice and water bottles because expansion could be complex and costly, and place an even greater burden on beverage dealers and distributors. The task force recommended that the bottle deposit law be amended "to relieve this burden and create market-based incentives to drive a more appropriate method for the collection of beverage containers". Beverage dealers and distributors have long argued that their food stores should not serve as a collection center for dirty containers. The containers are often unsanitary, storing them takes up store space, and collecting bottles and redeeming deposits takes retailers away from their core mission of selling food and beverages. Establishing regional redemption centers—another task force recommendation—might be a cleaner, more efficient method for collecting containers and redeeming deposits. Under the bill, the task force would have to monitor a pilot program for regional redemption centers.

***Against:***

The proposed council would serve largely as an advisory body to the legislature, lacking any real power to advance recycling in Michigan. Rather than actually improving recycling rates, the Recycling Advisory Council would be charged with studying issues that already were studied extensively by the 2003 Beverage Container and Recycling Task Force. The task force's nine hearings around the state generated many solid recommendations that received bipartisan and public support. These recommendations could be implemented right now. It is not necessary to wait for another body to gather more information and then present its findings to legislature.

***Response***

Establishing a Recycling Advisory Council was one of the task force's key recommendations. The Task Force believed that the council could facilitate a dialogue between the various interest groups affected by recycling policy, and then build a consensus among them for steps required to develop a comprehensive, statewide

recycling plan. Other recommendations from the task force may be implemented at a later date, but the Recycling Advisory Council is a necessary first step.

***Against:***

The bill would create a financial burden on the DEQ by requiring the Office of the Statewide Recycling Coordinator (a single person) to be staff for the council, without providing any additional funding for the department. Coordinating at least four major meetings a year--which most likely would include scheduling meetings, purchasing and distributing materials, and taking and publishing meeting minutes--would be a significant responsibility for one person with other full-time responsibilities. Currently, the coordinator facilitates and implements statewide recycling efforts. Functioning as council staff would detract from that central mission.

***Against:***

Requiring the Speaker of the House and the Senate Majority Leader to appoint most of the council members to an organization within the DEQ could entangle the legislative and executive branches of the government. The DEQ, like all state departments, is part of the executive branch. Having legislative leaders appoint members to the council could result in a separation of powers problem.

***Response:***

This type of appointment protocol is already in place for other councils, including the Groundwater Advisory Council. It would not establish a precedent.

***POSITIONS:***

The Michigan Manufacturers Association supports Senate Bill 790. (11-10-04)

Coca-Cola of Michigan supports Senate Bill 790. (11-10-04)

The Michigan Soft Drink Association supports Senate Bill 790. (11-10-04)

The Michigan Beer and Wine Wholesalers Association supports Senate Bills 790 and 854. (11-10-04)

The Associated Food Dealers supports the bills. (11-10-04)

The Michigan Grocers Association supports the bills. (11-10-04)

Michigan Distributors and Vendors support the bills. (11-10-04)

The Michigan Chamber of Commerce supports the bills. (11-10-04)

Michigan Recycling Partnership supports the bills. (11-10-04)

The Michigan Association of Counties supports Senate Bill 854, and would support Senate Bill 790 if amended. (11-10-04)

The Department of Environmental Quality opposes the bills. (11-10-04)

The Michigan Environmental Council opposes the bills. (11-10-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.