Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

ENVIRONMENTAL PROTECTION: SEPTAGE REGULATION, FEES, DISPOSAL, AND PENALTIES

House Bill 5771 (Substitute H-2)
House Bill 5772 as introduced
Sponsor: Rep. Ruth Johnson
Committee: Land Use and Environment

Complete to 9-9-04

A SUMMARY OF HOUSE BILLS 5771-5772 AS REPORTED FROM COMMITTEE

The bills would amend the Natural Resources and Environmental Protection Act and the Code of Criminal Procedure, respectively, to increase and revise the regulation of septage disposal, set septage program fees, create a storage facility development task force to make recommendations to the legislature; and establish sentencing guidelines for the crime of knowingly making a false report in a domestic septage licensing application. House Bill 5772 is tie-barred to House Bill 5771, so that it could not become law unless House Bill 5771 also were enacted. A more detailed explanation of each bill follows.

House Bill 5771 (H-2) would amend the Natural Resources and Environmental Protect Act (MCL 324.11701 et al) to specify that a person not engage in servicing without a septage waste servicing license and a septage waste vehicle license. (These licenses would not be applicable to a publicly owned receiving facility.) Further, a person would be prohibited from applying septage waste to land without having a site permit for the that site.

Five-year septage waste servicing license. Currently under the law, a person must have a septage waste servicing license, and that license is valid for three years. The application for the license must be accompanied by a $300 application fee (refunded if the license is not issued), and also a $100 fee which is credited to the Septage Waste Site Contingency Fund. Under House Bill 5771, these fees would be increased (see "Fees" below).

The law currently requires that an application include written approval from all private landowners and public septage waste treatment facilities where the applicant plans to dispose of septage waste. Under the bill, these provisions would be retained. In addition, more information would be required on the application, including a written plan for disposal of septage waste obtained in the winter, if the disposal would be by a method other than delivery to a receiving facility, or application to land; written proof of satisfaction of the continuing education requirements under the act; any other information pertinent and required by the department; and, payment of the septage waste servicing license fee. Once granted, the license would be valid for five years.

Continuing education. Under the bill, beginning on January 1, 2007, a person would not be eligible for an initial servicing license, or to renew a license, unless he or she had

completed at least 10 hours of continuing education during the two-year period before applying for the license. Beginning January 1, 2010, a licensee could not renew a license unless he or she had completed at least 30 hours of continuing education per five year license cycle.

The bill specifies that before offering or conducting a course of study that met the educational requirements of this act, a person would be required to obtain approval from the Department of Environmental Quality. Further, the department could suspend or revoke the approval of a person to conduct a course of study, for a violation of the law or rules.

If an applicant or licensee were a corporation, partnership or other legal entity, the applicant would be required to designate a responsible agent to fulfill the requirements noted above. That agent's name would have to appear on any license or permit required under this part of the act.

Record of complaints and record-keeping. Currently under the law, a person who holds a septage waste servicing license must maintain, at his or her place of business, a complete record of the amount of septage waste transported or disposed of, and the locations of disposal, and then make those records available upon the request of the department director, a police officer, or an official of the health department. Under the bill, these provisions would be modified so that the licensee also would be required to keep a record of any complaints received concerning disposal of the septage waste, and then report all information to the Department of Environmental Quality on a quarterly basis. Further, the licensee would be required to keep certain of the records for up to five years, and an individual who applied septage waste to land would be required to display his or her records upon the request of the director, a police officer, or an official of a certified health department.

Septage waste vehicles. Currently under the law, a person who is licensed to service is also required to have a septage waste motor vehicle license, having a $75 license fee. Under the bill, the fee would be increased to either $350 or $480 (see "Fees," below). Further, the vehicle license application would be required to include information to indicate whether the vehicle would be used at any time during the license period for land application of septage waste.

House Bill 5771 also prohibits a septage waste vehicle from transporting hazardous waste (regulated under part 111 of the code), or liquid industrial waste (regulated under part 121), without the express written permission of the Department of Environmental Quality.

Receiving facilities within 15 and 25 radial miles. Currently under the law, a licensee must deposit all septage waste in a public waste treatment facility, if a facility is available to receive that waste, and it is located within 15 miles of the location where the septage waste is received. (This requirement does not, however, restrict a person from taking the septage waste to any other public waste treatment facility.) House Bill 5771 would

eliminate this requirement. Instead, the bill specifies that a person engaged in servicing would be required to dispose of septage waste at an available receiving facility, as follows: a) for fiscal years 2005 through 2010, within 15 radial miles of the location where the waste was obtained, and b) in fiscal year 2011 and thereafter, within 25 radial miles. However, these requirements would not apply until fiscal year 2025 to a person engaged in servicing who constructed a storage facility of 50,000 gallons or more before a receiving facility had been established that would receive waste.

Under the bill, the department could issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility, due to excessive hydraulic or organic loading, odor problems, or other environmental concerns. The bill also would prohibit a person from disposing of septage waste at a wastewater treatment plant, if the operation of that plant had been curtailed by an order of the department.

Site permits. Currently under the law, a person can dispose of septage waste on land, if the person holds a permit from the department, and the waste is picked up at a location that is further than 15 road miles from a public septage waste treatment facility. In addition, an applicant for a permit must send a notice to each land owner who owns property within 800 feet of the proposed disposal location. Under the bill, these provisions would be eliminated, and the permitting process revised.

House Bill 5771 prohibits a person from disposing septage waste on land unless he or she has a site permit for that site. Further, the bill would require that when a person applied for a site permit, that application would have to include all of the following for each site: a) a map identifying the site from a county land atlas and plat book; b) the site location by latitude and longitude; c) the name and address of the land owner; d) the name and address of the manger of the land (if different); and e) soil fertility test results (performed within the previous year), including analysis of a representative soil sample of the site, as determined by tests specified in the bill. The department would be required to provide a publication describing recommended chemical soil test procedures, and a copy of the publication at no cost, to any person upon request. The application would also be required to provide test results from any additional test procedures that were performed on the soil. Finally, the applicant would be required to pay a one-time site permit fee of $500 (see “Fees,” below).

Upon receipt of an application, the department would be required to determine whether it was complete or incomplete, and then promptly notify the applicant of any deficiencies. An applicant for the site permit would be required to send simultaneous notice of the application and related information to the certified health department having jurisdiction, to the clerk of the city, village, or township where the site was located, to each person who owned a lot or parcel that was contiguous to the proposed site (or that was contiguous except for the presence of a highway, road, or street), and to each person who owned a lot within 150 feet of the proposed site.

Under the bill, the department would be required to issue a site permit, unless the site failed to meet standards. A site permit would not be transferable, and it would be valid until the expiration of the permittee's five-year septage waste servicing license.

Site permit requirements. Currently under the law, a permit is subject to several requirements. For example, septage waste must be mixed with soil within 48 hours of any surface application, unless the soil is frozen. This requirement would be eliminated under House Bill 5771. Or, the quantity of septage waste must be applied uniformly at a rate no greater than 15,000 gallons per acre per month, and not greater than 60,000 gallons per acre per month. This provision also is eliminated under the bill, and instead the bill requires that the septage waste be applied uniformly at "agronomic rates." The bill also would require that septage waste disposed of by land application be disposed of either by surface application, or injection. Further, a new site permit requirement under the bill specifies that if septage waste is applied to the surface of the land, then one of the following requirements must be met: a) the septage waste must be mechanically incorporated within 6 hours after application; or b) the septage waste must be treated to reduce pathogens prior to land disposal.

In addition, the bill requires that food establishment waste not be applied to land unless it had been combined with other septage in no greater ratio than 1 to 3, and blended into a uniform mixture. Under the bill, a permittee could not apply septage waste to a site unless he or she conducted a soil fertility test within the year before making application.

The bill also specifies that beginning two years after the effective date of this legislation, before land application, domestic septage would have to be screened through a screen of not greater than one-half inch mesh, or through slats separated by a gap of not greater than three-eighths inch, the screenings to be handled as solid waste under part 115 of the act. The bill also specifies that instead of screening, the septage can be processed through a sewage grinder designed to not pass solids larger than one-half inch in diameter.

Applications on frozen land. Under the bill, beginning two years after the effective date of this legislation, a person would be prohibited from applying septage waste to frozen land. Before that time, a person could not apply septage waste to frozen land unless seven requirements were met, all specified in the bill. These include but are not limited to new standards for pH levels, and that septage be applied to the surface with subsequent mechanical incorporation. (If the septage waste is applied to the surface with incorporation, then the department must approve the surface application and incorporation, then less than 10,000 gallons per acre can be applied during the period that the septage waste cannot be incorporated, and the septage waste must be incorporated within 20 days following the end of the frozen ground conditions.)

Inspections by department. Currently under the law, the department is required to inspect a septage waste disposal site at least once each year. Under House Bill 5771 this requirement would be expanded. Instead, the bill specifies that at any reasonable time, a representative of the department could enter in or upon any private or public property for the purpose of inspecting and investigating conditions relating to compliance with the

law. Further, the department would be required to inspect septage waste vehicles at least annually; to inspect a site at least annually; and to inspect a receiving facility within one year after that facility began operation, and at least annually thereafter.

Direct or indirect disposal. Currently the law prohibits a person from disposing of septage waste in a lake, pond, stream, river, or other body of water. Under the bill this provision would be retained, except that a person would be prohibited from disposing of septage waste "directly or indirectly" into these bodies of water.

Receiving facilities; surety; design; local preemption; construction permit. Currently under the law, if a governmental unit requires that all septage waste collected be disposed of in a septage waste treatment facility (called a receiving facility, under the bill), and effectively prohibits the application of septage waste to land, then the governmental unit must make available a receiving facility that can lawfully accept all septage waste generated. The owner or operator of the receiving facility cannot require the posting of a surety, including cash in an escrow account or a performance bond. Under House Bill 5771, the owner or operator of a receiving facility would be able to require the posting of a surety; however, it could not exceed $25,000.

The bill also specifies that this legislation if enacted into state law would not preempt an ordinance of a governmental unit that prohibited the application of septage waste to land, or that otherwise imposed stricter requirements.

The bill specifies that the Department of Environmental Quality would promulgate rules establishing design and operating requirements for receiving facilities, and for the control of nuisance conditions. Under the bill, a person would be prohibited from beginning construction on a receiving facility on or after the date on which rules were promulgated, unless the owner had a permit from the department authorizing the construction. The application of a permit would have to include a basis of design for the facility, engineering plans sealed by an engineer licensed to practice in Michigan, and any other information required by the department. Further, a person could not operate a receiving facility whose construction began on or after the date on which rules had been promulgated, unless the owner of the receiving facility had submitted to the department and obtained the department's approval of an operating plan.

If the construction began before the date on which the rules were promulgated, then four conditions would apply: a) within a year after the rules had been promulgated, the owner would be required to submit and receive approval of a report prepared by a professional engineer describing the receiving facility's state of compliance with the rules, and proposing any modifications to the receiving facility that would be necessary to ensure full compliance; b) if modifications were necessary, then within 18 months after the rules had been promulgated, the owner of the receiving facility would be required to submit engineering plans for modifying the facility, and obtain a construction permit for those modifications; c) within three years after the promulgation of the rules, the owner would be required to complete construction of the modifications so that the facility complied with the rules; d) within one year after receiving the department's approval of the report (see a, above), the owner would be required to submit to the department, and obtain its

approval, of an operating plan. Further, a person could not operate a receiving facility contrary to an approval plan. Finally, after a hearing, the department could order that a receiving facility whose owner failed to comply, cease operating.

Storage facility development task force. The bill requires that within 60 days after the effective date of this legislation, the Department of Environmental Quality convene a task force to make recommendations on storage facility development and regulation, including but not limited to storage facility inspections. The bill specifies that the task force include at least all of the following: a) a storage facility operator; a receiving facility operator; a generator of septage waste; a representative of township government; e) a representative of an environmental protection organization; and f) a septage hauler licensed in the state. Then within 18 months after the effective date, the task force would submit a report on its recommendations to the committees of the senate and house of representatives that had primary responsibility for environmental protection matters.

Certified health departments. Currently under the law, the department is required to certify city, county, and district departments of health to carry out responsibilities under the law. The bill specifies that the department "may" certify health departments, and if a health department does not exist, then the department could contract with qualified third parties to carry-out the responsibilities. Those who carry-out the powers and duties of the department would be required to enter into a memorandum of understanding, or a contract, with the department, describing the duties and providing for compensation to be paid by the department.

Septage Waste Contingency Fund and Septage Waste Program Fund. Currently under the law, there is a Septage Waste Contingency Fund, financed by a $100 fee collected from each person who holds a septage waste servicing license. Under the bill, the fund would be retained, but the $100 would be eliminated. The bill also specifies that the department expend money from the contingency fund only to defray costs of the continuing education courses that would otherwise be paid by people taking the courses. In addition, the bill would require that a Septage Waste Program Fund be created within the state treasury, administered by the state treasurer, the money from which could be used, upon appropriation, only for the enforcement and administration of this part of the act, including but not limited to, compensation to certified health departments or third parties carrying out certain powers and duties of the department.

The bill specifies that fees and interest collected under the bill would be deposited to the Septage Waste Program fund. In addition, promptly after the effective date of the bill, the state treasurer would be required to transfer to the fund, all the money in the Septage Waste Compliance Fund.

Fees. The bill specifies that the cost of administering this program be recovered by collecting fees from those engaged in servicing, or engaged in operating a receiving facility. Fee categories and rates would be as follows:

a) the fee for a septage waste servicing license is $200 per year;

b) the fee for a septage waste vehicle license is as follows: i) for vehicles that would not be used for disposal of septage waste by land application, $350 per year for each septage waste vehicle; and ii) for those vehicles that would be used for disposal by land application, $480 per year;
c) the fee for a site permit is $500 (however, a person would not be charged a fee to renew a site permit).

Under the bill, all those who have a septage waste servicing license and waste vehicle license as of January 1 would be notified by the department before February 1 and assessed the new fees, and payments would have to be postmarked by March 15. The department would assess interest on all fee payments received after the due date, and that amount of interest would equal 0.75 percent of the payment due, for each month or portion of a month the payment remained past due. If payment were not received by October 1, then the department could revoke a license or permit.

Rules. The bill would require the department to promulgate rules concerning a) continuing education requirements, and b) the design and operating requirements for receiving facilities. Under the bill, the department could also promulgate rules that did one or more of the following: a) added other materials and substances to the definition of septage waste; b) added enclosures to the list of enclosures in the definition of septage waste, the servicing of which required a septage waste servicing license; c) specified information required on an application for a septage waste servicing license, a septage waste vehicle license, or site permit; and d) established standards or procedures for a department declaration that a wastewater treatment plant or structure was unavailable as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other factors.

Penalties. Under the bill, a person who violated the sections of the act concerning septage waste vehicle licensing (section 11704), septage waste vehicle tanks (section 11705), appropriate receiving facilities (section 11708), site permit applications (section 11709), requirements concerning septage waste applied to land (section 117010), and the ban on frozen land application, beginning two years after the effective date of the act (section 117011) would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $5,000, or both. Currently under the law, a person who violates a condition of a license is guilty of a misdemeanor punishable by imprisonment for not more than 10 days, or a fine of not more than $500, or both.

Further, a person who knowingly made a false statement in a license application or a record required for licensing would be guilty of a felony punishable by imprisonment for not more than two years, or a fine of not less than $2,500 or more than $25,000, or both imprisonment and a fine.

Finally, a person who violated this part, or a license or permit issued under this part of the act other than those noted above, would be guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $1,000 and not more than $2,500, or both.

The bill specifies that each day a violation continued would constitute a separate violation.

Variance. The bill specifies that the director of the Department of Environmental Quality could grant a temporary variance from a requirement, if all of the following requirements were met: a) the variance was requested in writing; b) the requirements of this law could not otherwise be met; c) the variance would not create or increase the potential for a health hazard, nuisance condition, or pollution of surface or groundwater; and d) the activity or condition for which the variance was proposed would not violate any part of the act. Any variance would have to be posted on the department's website.

Definitions. The bill would add 20 new definitions to the act, and eliminate three. Among the new terms that would be defined are "department" which would mean the Department of Environmental Quality, "domestic septage" (in contrast to liquid or solid material removed from commercial and industrial wastewater), "domestic sewage" which would mean waste and wastewater from humans or household operations, "domestic treatment plant septage," "food establishment septage," "fund" which would mean the septage waste program fund, "incorporation" which would mean the mechanical mixing of surface-applied septage waste with the soil, "pathogen," "receiving facility," "sanitary sewer cleanout septage," "septage waste," "septage waste servicing license," "septage waste vehicle," "septage waste vehicle license," "site," "site permit" which would mean a permit authorizing the application of septage waste to a site, "storage facility," and "type III marine sanitation device."

House Bill 5772 would amend the Code of Criminal Procedure (MCL 777.13c) to establish a sentencing guideline for the crime of knowingly making a false report in a domestic septage licensing application. The bill would identify that violation of the law as a class G public safety crime, for which the state maximum penalty would be two years incarceration.

FISCAL IMPACT:

The fee structure provided in this bill would generate approximately $500,000. This revenue would adequately support the costs incurred by the Department of Environmental Quality to fulfill the obligations included in this bill. There would be no fiscal impact on local governmental units.

Legislative Analyst: J. Hunault
Fiscal Analyst: Kirk Lindquist

■ 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.