



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5867 (Substitute H-1 as passed by the House)
Sponsor: Representative Tom Alley
House Committee: Conservation, Environment and Great Lakes

CONTENT

The bill would amend the Part 115 (Solid Waste) of the Natural Resources and Environmental Protection Act to revise the financial assurance requirements for landfill licenses. The bill would:

- Delete the requirement that an applicant for a license to operate a disposal area post a bond to cover the cost of closure and postclosure monitoring and maintenance of the area. Instead, the bill would require the applicant to provide evidence of financial assurance and specifies the form of the financial assurance for Type II and Type III landfills. "Financial assurance" would mean the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action would be available whenever they were needed.
- Allow a person required to provide financial assurance in the form of a bond for a landfill to request a reduction in the bond based on the value of the perpetual care fund that currently must be established for each landfill.
- Define "bond" as a financial instrument executed on a form approved by the Department of Environmental Quality (DEQ), including a surety bond from a surety company authorized to transact business in this State, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the DEQ. (The Act defines "bond" as a surety bond from an authorized surety company, a certificate of deposit, a cash bond, or an irrevocable letter of credit.)
- Delete the requirement of a \$50,000 per acre bond and a \$2 million letter of credit or bond for a landfill that receives municipal solid waste incinerator ash.
- Prohibit the DEQ, effective April 9, 1997, from issuing a Type II landfill license unless the applicant demonstrated that for any new unit or existing unit at the facility, the combination of the perpetual care fund, bonds, and the financial capability of the applicant as evidenced by a financial test, provided the requisite financial assurance.
- Allow a landfill owner or operator to request the DEQ to reduce the approved cost estimates and corresponding financial assurance for the landfill by certifying completion of partial or final closure of the landfill or complete of postclosure maintenance and monitoring. The owner or operator also could request a reduction of the financial assurance mechanisms if the combined value of the remaining mechanisms equaled the required financial assurance.
- Allow the owner or operator of a landfill to establish a trust fund or escrow account to provide the required financial assurance.
- Delete the requirement that a landfill owner or operator use a perpetual care fund exclusively for closure, monitoring, and maintenance of the landfill and for response activity. Instead, the bill would allow the fund to be used to demonstrate financial assurance for Type II landfills and would require that it be maintained for 30 years after final closure of the landfill. The fund is maintained by a fee of 75 cents per ton of solid waste disposed of, or if there is no scale, by a fee of 25 cents per cubic yard of solid waste. The bill specifies that the fee would be either 75 cents per ton or 25 cents per cubic yard, regardless of whether there was a scale. Further, the bill would require the deposits to be made at least semiannually until the fund reached the maximum amount, which, as of the effective date of the bill, would be \$1,156,000. The maximum amount would have to be adjusted annually for inflation.

- Delete provisions that specify the types of financial instruments in which the custodian of a perpetual care fund must invest the fund, and instead, require that the interest and earnings of the fund be credited to the fund until it reached the maximum required amount.
- Allow the owner or operator to request disbursement of funds from a perpetual care fund whenever it exceeded the maximum required fund amount. The DEQ would have to approve the disbursement if the total amount of financial assurance maintained met the required amount. Currently, the owner or operator of a landfill may request a disbursement of funds from a perpetual care fund and the DEQ has 60 days within which to grant approval or issue a denial. If the fund falls below the required amount for financial assurance, the DEQ is not required to approve a disbursement and the cost of necessary closure, monitoring, maintenance, and response activities are the burden of the owner and operator.
- Specify that upon approval by the DEQ of a request to terminate financial assurance for a landfill, money left in the perpetual care fund would have to be returned to the owner. Currently, after the expiration of 30 years after the closure of a landfill, 50% of the perpetual care fund for that landfill must be deposited into the Environmental Response Fund and 50% returned to the owner of the disposal areas unless a contract between the owner and the operator of the disposal areas provides otherwise.
- Delete the requirement that municipal solid waste incinerator ash be regulated under Part 115 as solid waste and not under Part 111 (Hazardous Waste Management) and delete provisions for the temporary storage of municipal solid waste incinerator ash.
- Change certain landfill design specifications and capping requirements.

The bill is tie-barred to Senate Bill 941, which would revise current fee structures and establish new fees for solid waste disposal facilities, and establish a Solid Waste Management Fund.

MCL 324.11502 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State depending on the number of landfills that close, the amount of money deposited into and withdrawn from perpetual care funds, and the ending balances in the funds. Over 40 years, the State revenue loss could be between zero and approximately \$390 million. The bill, as tie-barred to Senate Bill 941, would increase State revenue by \$1.2 million annually, or approximately \$115.4 million over 40 years.

The Department estimates that at least \$460 million in 1996 dollars would be needed to close and monitor current landfills, not including any corrective actions. In 40 years, with 3% inflation, this cost would equal \$1.52 billion. With no withdrawals, a 7% interest rate, and the current revenue stream of \$9 million per year, combined fund balances could total \$2.3 billion in 40 years. Although the actual amount remaining after 40 years would depend on how and when the funds were withdrawn, these estimates suggest that the highest net amount remaining in perpetual care funds would be \$780 million, half of which (approximately \$390 million) would revert to the State. In 1996 dollars this would total approximately \$123 million in revenue. In House Bill 5867 (H-1), landfill closure and postclosure costs would be borne by the owner, the owner's perpetual care funds (which could total \$300 million in 40 years), other financial assurance instruments, and the State perpetual care fund (which could total \$37 million in 40 years).

As tie-barred to Senate Bill 941, which would establish new fees for construction permits and operating licenses, there would be an increase in revenue of \$1,040,000 for staff support in the DEQ, and approximately \$187,000 for deposit into the State perpetual care fund, respectively.

Date Completed: 6-6-96

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.