



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 437 (Substitute S-9 as reported by the Committee of the Whole)
Senate Bill 1345 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 1346 (Substitute S-3 as reported by the Committee of the Whole)
Senate Bill 1347 (Substitute S-3 as reported by the Committee of the Whole)
Senate Bill 1348 (Substitute S-3 as reported by the Committee of the Whole)
Senate Bill 1349 (Substitute S-3 as reported by the Committee of the Whole)

Sponsor: Senator Jason E. Allen (S.B. 437)
Senator Patricia L. Birkholz (S.B. 1345)
Senator Alan Sanborn (S.B. 1346)
Senator Raymond E. Basham (S.B. 1347)
Senator John Gleason (S.B. 1348)
Senator Buzz Thomas (S.B. 1349)

Committee: Natural Resources and Environmental Affairs

CONTENT

Senate Bill 437 (S-9) would amend Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require the Director of the Department of Natural Resources and Environment (DNRE) to establish a Response Activity Review Panel to advise him or her on technical or scientific disputes concerning response activity plans or "no further action" reports.
- Allow a person to petition the Panel for review of a DNRE determination and prescribe a \$3,500 petition fee.
- Exempt a person from liability for environmental contamination if the DNRE approved his or her no further action report.
- Delete provisions allowing a lender that is not responsible for an activity causing a release at a facility to transfer the property to the State under certain circumstances.
- Prohibit the DNRE from enforcing specific administrative rules pertaining to baseline environmental assessments (BEAs), beginning on the bill's effective date.

Senate Bill 1345 (S-2) would amend Part 201 to do the following:

- Allow a liable facility owner or operator to pursue response activities by conducting a self-implemented cleanup or obtaining DNRE approval of his or her response activities.
- Require a person who pursued a self-implemented cleanup to submit to the DNRE a no further action report detailing completion of the response activities.
- Prescribe factors that the DNRE would have to consider in selecting or approving a remedial action.
- Revise the categories used in determining the appropriate remedial action.
- Allow the DNRE to approve a response activity plan based on site-specific criteria under certain circumstances.
- Rescind administrative rules related to a DNRE list identifying and categorizing environmental contamination sites.
- Prescribe methods by which a person proposing or implementing a response activity involving venting groundwater could demonstrate compliance with Part 201.
- Repeal a section prescribing a process by which a person may petition the DNRE for an exemption from liability after completion of a BEA.

- Repeal a section providing for a municipal landfill cost-share grant program.
- Rescind certain administrative rules pertaining to response activities.

Senate Bill 1346 (S-3) would amend Part 201 to do the following:

- Permit, rather than require, the DNRE to promulgate rules to implement Part 201.
- Delete references to the specific purposes of the rules.
- Provide that a guideline, bulletin, interpretive statement, or operational memorandum of the DNRE could not be given the force and effect of law and would not be legally binding on any person.
- Define several terms used in the other bills and revise definitions of existing terms used in Part 201, including "facility".

Part 201 defines "facility" as any area, place, or property where a hazardous substance in excess of the concentrations satisfying requirements specified in that part or the cleanup criteria for unrestricted residential use under Part 213 (Leaking Underground Storage Tanks) has been released, deposited, or disposed of, or otherwise comes to be located, excluding property where response activity or corrective action satisfying certain cleanup criteria has been completed. The bill also would exclude any area, place, or property where site-specific criteria approved by the DNRE for application at that location are satisfied and both of the following conditions are met:

- The site-specific criteria do not depend on any land or resource use restriction to assure protection of the public health, safety, or welfare or the environment.
- Hazardous substances at the area, place, or property that are not addressed by site-specific criteria satisfy the cleanup criteria for unrestricted residential use.

Senate Bill 1347 (S-3) would amend Part 201 to do the following:

- Require the owner or operator of a facility from which a hazardous substance emanated to notify the DNRE and the owners of property to which the substance migrated.
- Require the DNRE to create inventories of residential closures and other known facilities.
- Require the DNRE to compile data on and notify the Legislature of requests for approval of response activity plans and no further action reports and BEAs the Department received.

Senate Bill 1348 (S-3) would amend Part 201 to revise provisions regarding civil and criminal penalties (reflecting changes made by the other bills).

Senate Bill 1349 (S-3) would amend Part 201 to do the following:

- Expand the responsibilities of the owner or operator of a facility where hazardous substances are present.
- Require the State or a local unit of government to take certain actions regarding hazardous substances if it invited the public onto its property.
- Authorize the DNRE to renegotiate the terms of an outstanding loan from the Revitalization Revolving Loan Fund.

The expanded responsibilities of a facility owner or operator would include the following:

- Providing reasonable cooperation, assistance, and access to the people authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility.
- Complying with any land or resource use restrictions established or relied on in conjunction with the response activities at the facility.

- Not impeding the effectiveness or integrity of any land or resource use restriction employed at the facility in connection with response activities.

Senate Bill 437 (S-9) is tie-barred to Senate Bills 1345, 1346, and 1348 and to House Bills 6360 and 6363 (which would amend Part 201 in a manner similar to Senate Bills 1349 (S-3) and 1347 (S-3), respectively). Senate Bill 1345 (S-2) is tie-barred to Senate Bills 1346 and 1348 and to House Bills 6360, 6363, and 6359 (which proposes amendments similar to those proposed by Senate Bill 437 (S-9)). Senate Bill 1346 (S-3) is tie-barred to Senate Bills 1345 and 1348 and to the three House Bills. Senate Bill 1347 (S-3) is tie-barred to Senate Bills 1345, 1346, and 1348 and to House Bills 6359 and 6360. Senate Bill 1348 (S-3) is tie-barred to Senate Bills 1345 and 1346 and to House Bills 6359, 6360, and 6363. Senate Bill 1349 (S-3) is tie-barred to Senate Bills 1345, 1346, and 1348 and to House Bills 6359 and 6363.

MCL 324.20126 et al. (S.B. 437)
324.20114a et al. (S.B. 1345)
324.20101 et al. (S.B. 1346)
324.20112a et al. (S.B. 1347)
324.20129 et al. (S.B. 1348)
324.20107a & 324.20108b (S.B. 1349)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The legislation would require the Director of the Department to establish a Response Activity Panel, whose members would serve without compensation. Panel members could be reimbursed for actual and necessary expenses associated with their service on the panel, and some costs would likely be incurred as a result.

The bills would change the way the adequacy of cleanups is determined. Under current law, the Department may promulgate generic rules for the adequacy of different types of environmental cleanup efforts. Under the bills, the Department would be required to analyze the adequacy of a given cleanup on a case-by-case basis. The Department has estimated in its analysis of a similar bill that this new standard could introduce inefficiencies into the determination process. Since no additional appropriations to the Department would occur under the package, these inefficiencies could lead to backlogs in the cleanup determination process.

Other changes to Part 201 from this legislation would have an indeterminate fiscal impact on State and local government.

Date Completed: 8-9-10

Fiscal Analyst: Josh Sefton