

Legislative Analysis



SOLID WASTE MANAGEMENT AMENDMENTS

Phone: (517) 373-8080
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House Bill 4454 as reported from committee
Sponsor: Rep. Gary Howell

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4455 as reported from committee
Sponsor: Rep. Sara Cambensy

House Bill 4456 (H-1) as reported
Sponsor: Rep. William J. Sowerby

House Bill 4459 as reported
Sponsor: Rep. David W. Martin

House Bill 4457 (H-1) as reported
Sponsor: Rep. Yousef Rabhi

House Bill 4460 (H-1) as reported
Sponsor: Rep. Scott VanSingel

House Bill 4458 as reported
Sponsor: Rep. Jack O'Malley

House Bill 4461 (H-1) as reported
Sponsor: Rep. Joe Tate

Committee: Natural Resources and Outdoor Recreation
Complete to 4-21-21

BRIEF SUMMARY: Taken together, the bills would amend Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act (NREPA) to revise, rewrite, and reorganize the laws regulating solid waste, including coal ash and recyclables, in Michigan. The bills would create topically organized subparts, described below, within Part 115.

FISCAL IMPACT: The bills would have different fiscal impacts, with some increasing costs for the Department of Environment, Great Lakes, and Energy (EGLE) and others having an indeterminate fiscal impact on the state and local units of government. (See **Fiscal Information**, below, for more information.)

THE APPARENT PROBLEM:

According to committee testimony, Michigan has an 18% recycling rate, compared to the national average of 34%. This could be attributed to Michigan's current regulations, which focus primarily on disposal capacity and landfills due to the extraordinarily low disposal costs. Some believe that Michigan has the capacity to recycle 45% of household waste. The bill package seeks to move the state toward materials management that prioritizes productive, valuable, and beneficial uses of discarded materials.

THE CONTENT OF THE BILLS:

House Bill 4454 and 4455 would designate sections 11502 to 11508 of Part 115 as *Subpart 1 (General and Definitions)*. The bills would amend these sections to modify and add definitions for terms employed in the other bills of the package or elsewhere in Part 115. Notably, HB 4455 would amend the section describing the purpose of Part 115 to include the promotion of recycling and reusing materials, with an ultimate goal of achieving a 45% municipal solid waste recycling rate, with a 30% rate by 2029, through benchmark recycling standards that

provide goals and time frames for recycling in certain geographic areas of the state. The bill would also add provisions requiring a materials management plan (MMP), which would replace current requirements for solid waste management plans.

MCL 324.11502 and 324.11503 (HB 4454)

MCL 324.11504 et seq. (HB 4455)

House Bill 4456 would amend the regulations for solid waste disposal areas and waste diversion centers by separating the different kinds of facilities and reorganizing current provisions. Regulations governing solid waste disposal areas would be designated as *Subpart 2 (Disposal Areas)*, while regulations surrounding waste diversion centers would be designated as *Subpart 3 (Waste Diversion Centers)*.

Subpart 2 would govern disposal areas other than a solid waste processing and transfer facility or an incinerator that does not comply with the construction permit and operating license requirements within the subpart. Among other things, it would also do the following:

- Change certain references from Part 115 to the Michigan Administrative Code for new coal ash landfills or impoundments, or new lateral expansions of coal ash landfills or impoundments.
- Increase several of the application fees for a construction permit of a disposal area, a type II and type III landfill operating license, and certain solid waste processing and transfer facility operating licenses by doubling the current amounts.
- Allow an existing industrial waste landfill to accept industrial waste or solid waste that originates from an industrial site and is not hazardous waste regulated under Part 111 (Hazardous Waste Management) of NREPA.
- Allow the Department of Environment, Great Lakes, and Energy (EGLE) or an authorized representative to inspect and investigate, at reasonable times, conditions relating to the generation, storage, processing, transportation, management, or disposal of solid waste or any material regulated under Part 115.
- Regulate closure and postclosure undertakings.

Subpart 3 would regulate waste diversion centers, including the following:

- Requiring that waste diversion centers not receive an amount of solid waste 15% or more, by weight, of the diverted waste received by the facility.
- If the primary function of the entity is to serve as a waste diversion center, notifying EGLE of the waste diversion center upon initial operation and within 45 days after the end of each fiscal year.

MCL 324.11509 et seq.

MCL 324.11521 and 324.11522 (repealed)

House Bill 4457 would amend the financial assurance provisions in Part 115 and designate them as *Subpart 4 (Financial Assurance)*. Among other things, the bill would do the following:

- Increase the available total financial assurance bond amount to \$2.0 million as well as make clear the types of landfills that are subject to the bond.
- Remove the current financial assurance bond rate calculations for a licensed solid waste processing and transfer facility or incinerator and mandate that the bond would be \$20,000.
- Increase the listed standard closure and postclosure cost estimates.

- Increase the maximum required fund amount for a landfill or coal ash impoundment.
- Adjust and add surcharge amounts for landfills and coal ash impoundments and change the calculations from cubic yards to tons of waste.
- Allow an owner or operator of a materials utilization facility, who is required to provide financial assurance, to request that the financial assurance be terminated by submitting to EGLE a statement that the facility has maintained compliance with Part 115 and that all managed material has been removed from the facility.
- Create regulations for a landfill care fund trust fund, applicable to existing type II or III landfills.

MCL 324.11523 et seq.

House Bill 4458 would amend and reorganize provisions of Part 115 as the following:

- *Subpart 5 (Miscellaneous)*, which would generally regulate solid waste haulers and solid waste transporting units, including the inspections of such entities, and require certain solid waste haulers to provide recycling services for single-family residences. This subpart also would change “solid waste” to “managed materials,” require EGLE or a health officer to inspect and file a written report at least four times per year for each licensed disposal area and at least once per year for each approved materials utilization facility, and allow EGLE to promulgate rules to implement Part 115.
- *Subpart 6 (Incinerators and Open Burning)*, which would comprise incinerator and open burning regulations, such as prohibiting the open burning of yard waste in any municipality with a population of 7,500 or more (unless the municipality allows it through a local ordinance) and providing penalties for violations.
- *Subpart 7 (Enforcement)*, which would provide for the enforcement of Part 115, including fines for general violations.

MCL 324.11526 et seq.

MCL 324.11529, 324.11534 to 324.11538, 324.11539a, 324.11547, and 324.11548 (repealed)

House Bill 4459 would amend and reorganize provisions of Part 115 as the following:

- *Subpart 8 (Fund and Grants)*, which would regulate the Solid Waste Management Fund. Among other things, the provisions would expand the list of purposes money from the fund could be used for (such as education and outreach and a full-time equivalent employee for the Michigan Economic Development Corporation to address recycled materials market development), as well as requiring EGLE to provide grants for new programs (such as the recycling markets program, recycling innovation program, and recycling access and voluntary participation program).
- *Subpart 9 (Beneficial Use By-Products)*, which would promote and foster the use of wastes and by-products for recycling or beneficial use.

MCL 324.11550, 324.11553, and 324.11554

House Bill 4460 would add *Subpart 10 (Materials Utilization Facilities)* to regulate compostable materials, including household, commercial, and farming composting activities, as well as anaerobic digesters and innovative technology facilities.

Proposed MCL 324.11555 et seq.

House Bill 4461 would add *Subpart 11 (Materials Management Plans)* to further regulate MMPs in place of current solid waste management plans. The subpart would require EGLE to ensure that each county in Michigan has an approved MMP, which could include two or more counties under the same MMP, as well as outline the procedures for county-approved agencies (CAA) to create, submit, review, monitor, enforce, amend, and fund an MMP. Additionally, EGLE would have to create a Materials Management Planning Grant Program to provide grants to county boards of commissioners or CAAs or, in the absence of either, EGLE, for MMP preparations, implementations, and maintenance.

Proposed MCL 324.11571 et seq.

Each bill would take effect 90 days after its enactment. All of the bills are tie-barred to one another, which means that none of them could take effect unless all of them were enacted.

FISCAL INFORMATION:

House Bills 4454 and 4455 are unlikely to directly affect costs or revenues for EGLE. Local governments that own or operate waste facilities subject to Part 115 of NREPA may experience additional costs in converting their respective solid waste management plans to meet the requirements of the new materials management plan (MMP). These costs are likely to vary, as some facilities' current plans are more in line with MMP requirements than others'. The bills are not likely to affect local government revenues.

House Bill 4456 would increase revenue for EGLE by raising the fees required for various landfill construction permits. This revenue is deposited to the Solid Waste Management Fund, Solid Waste Staff Account. Recent fund revenues are listed below:

FY 2014-15	\$5.4 million
FY 2015-16	\$5.6 million
FY 2016-17	\$5.7 million
FY 2017-18	\$4.9 million
FY 2018-19	\$6.6 million
FY 2019-20	\$3.5 million

The magnitude of annual revenue is partially dependent on the number of fee-subject facilities each year, but an increase of current fee rates is likely to lead to some degree of revenue increase.

The Solid Waste Staff Account is primarily used to support the Solid Waste Management Program. This program permits and regulates municipal and industrial solid waste disposal facilities, including landfills, transfer stations, and processing plants; administers the Electronic Waste Takeback Program; and provides aid to communities for solid waste management planning, recycling, and composting activities. Recent Gross funding for the program is listed below:

FY 2014-15	\$4.9 million
FY 2015-16	\$4.9 million
FY 2016-17	\$5.0 million
FY 2017-18	\$5.1 million

FY 2018-19	\$5.2 million
FY 2019-20	\$5.3 million
FY 2020-21	\$6.7 million

It is important to note that the program receives a minority of its funding from other sources, including the Coal Ash Care Fund and the Electronic Waste Recycling Fund, so the annual appropriations listed above are not solely supported by Solid Waste Management Fund revenues.

The bill would also raise fees for various landfill operating permits. This revenue is deposited to the Solid Waste Management Fund, Perpetual Care Account. The Perpetual Care Account is used for post closure maintenance and monitoring at disposal areas that have been orphaned or not properly closed by the most recent owner or operator.

The bill would increase costs for local governments that own or operate facilities that are subject to the aforementioned fees.

House Bill 4456 would also have an indeterminate fiscal impact on the state and on local units of government. Currently, under section 11549 of NREPA, unless otherwise stated, a person who violates any provision within Part 115 of the act is guilty of a misdemeanor punishable by a fine, or jail time if in default of payment of fine and costs. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision, and fewer misdemeanor convictions would reduce those costs. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any change in penal fine revenue received from misdemeanor convictions would affect funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Revenue collected from the payment of civil infraction penalties is used to support public and county law libraries, and, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the state’s Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System. Because there is no way to determine the number of violations that would occur under provisions of the bill, it is not possible to estimate the amount of additional costs or revenue to the state or to local units.

House Bill 4457 may increase costs for local governments that own or operate materials utilization facilities, including materials recovery facilities or composting facilities, by requiring a financial assurance of at least \$20,000 to be held until closure certification is received from EGLE. All facilities subject to Part 115 are required to maintain a financial assurance until EGLE certifies facility closure which may represent a cost increase to certain local governments.

House Bill 4458 would have an indeterminate fiscal impact on the state and on local units of government. Currently, under section 11549 of NREPA, unless otherwise stated, a person who violates any provision within Part 115 of the act is guilty of a misdemeanor punishable by a fine, or jail time if in default of payment of fine and costs. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision,

and fewer misdemeanor convictions would reduce those costs. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any change in penal fine revenue received from misdemeanor convictions would affect funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Revenue collected from the payment of civil infraction penalties is used to support public and county law libraries, and, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the state's Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System. Because there is no way to determine the number of violations that would occur under provisions of the bill, it is not possible to estimate the amount of additional costs or revenue to the state or to local units.

House Bill 4459 is likely to increase costs for EGLE by requiring the department to inspect licensed materials utilization facilities for compliance with Part 115 of NREPA, similar to inspection required of license solid waste disposal areas.

The bill would also increase costs for local governments that own or operate solid waste incinerators by requiring the submission of a plan that reduces the incineration of noncombustibles, dangerous combustibles, and hazardous by-products.

Allowable uses of the Solid Waste Management Fund, Solid Waste Staff Account would also be expanded under the bill to include the following:

- Materials management planning
- Materials utilization education and outreach
- Development of a materials utilization and recycled materials market directory
- Administration of grants and loans as provided under Part 115
- Up to one full-time employee to develop markets for recycled materials

The bill would allow EGLE to provide grants for a recycling markets program, a local recycling innovation program, and a recycling access and voluntary participation program. The department would be required to establish criteria upon which award applications would be evaluated.

House Bill 4460 would increase costs for EGLE by requiring ongoing reports and record-keeping of materials utilization facilities, including materials recovery facilities, compositing facilities, and innovative technology facilities. The bill would also increase revenue for the department by requiring the owners and operators of these facilities, usually the larger scale facilities, to pay permit fees ranging from \$750 to \$1,000 for a five-year term (innovative technology facility permits would last for two years). These revenues would be deposited to the Solid Waste Management Fund, Perpetual Care Account like landfill operating permits.

House Bill 4461 would establish a materials management planning grant program for counties or their designees. Grants would be used to cover costs incurred in the preparation, implementation, and maintenance of materials management plans. Program funding would be contingent on appropriation by the legislature and may be supported by the expanded uses of

(HB 4459) and increased revenue from (HB 4456) the Solid Waste Management Fund, Solid Waste Staff Account.

ARGUMENTS:

For:

Supporters of the bills argue that the bill package is needed to help Michigan compete and participate in the management of recycled materials. Currently, valuable items such as yard waste, food scraps, and recyclables are being discarded in landfills. Capturing these items for other beneficial uses (such as creating rich compost or repurposing recycled items into other consumables) will help to improve local economies through employment opportunities and labor revenue, while also improving the health of Michiganders by diverting materials that are harmful to the environment and turning them into useful products.

Additionally, at some point in time, Michigan will be unable to contain the trash that is currently going to landfills. Landfills can only hold so much material, so it is imperative that Michigan begin the process of diverting useful materials from landfills before the landfills reach capacity.

Against:

Critics of the bills argue that landfills aren't entirely bad for Michigan and in fact can turn the collection of gases that landfills produce into valuable energy. Diverting waste from those landfills could decrease the gases that are collected, thus producing less energy for Michiganders.

Concerns were also raised that rural communities will be left out of the economic advantages of increasing the management of materials in those areas. Roadside collection for recyclables and yard waste is too costly for these communities, and relying on citizens to drop those items off at a facility is risky, especially during winter months. Rural areas might therefore not see a benefit relative to the costs required for a material management program.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Department of Environment, Great Lakes, and Energy (3-25-21)
- Michigan Recycling Coalition (3-18-21)
- Michigan Townships Association (3-25-21)
- Upper Peninsula Environmental Coalition (3-25-21)
- Michigan Chemistry Council (3-25-21)
- Michigan Environmental Council (3-25-21)

The following entities indicated support for the bills:

- Foundry Association of Michigan (3-18-21)
- Michigan Chamber of Commerce (3-18-21)
- Michigan League of Conservation Voters (3-18-21)
- Sierra Club (3-18-21)
- Michigan Soft Drink Association (3-18-21)
- Consumers Energy (3-18-21)

- Resource Recovery and Recycling Authority of Southwest Oakland County (3-18-21)
- Michigan Retailers Association (3-25-21)

Michigan State University indicated support for HB 4459. (3-25-21)

The Composting Council of Michigan indicated support for HB 4460. (3-25-21)

Food Plus Detroit indicated support for HBs 4460 and 4461. (3-25-21)

A representative of the Michigan Waste and Recycling Association testified with no position on the bills. (3-25-21)

The Michigan Farm Bureau indicated no position on the bills. (3-25-21)

Michigan Biomass indicated a neutral position on the bills. (3-18-21)

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