House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SOLID WASTE; FINANCIAL ASSURANCE AND FEES

House Bill 5867 as enrolled
Public Act 359 of 1996
Sponsor: Rep. Tom Alley

Senate Bill 941 as enrolled
Public Act 358 of 1996
Sponsor: Sen. George A.McManus, Jr.

House Committee: Conservation, Environment and Great Lakes
Senate Committee: Appropriations
Second Analysis (7-29-96)

THE APPARENT PROBLEM:

After several months of consideration, a subcommittee of the House Conservation, Environment and Great Lakes Committee recently recommended legislation that would "overhaul" the state's solid waste management regulations, which have remained virtually unchanged for several years. The legislation would amend Part 115 of the Natural Resources and Environmental Protection Act (NREPA), which regulates the state's solid waste disposal areas. (Under Public Act 451 of 1994, which recodified Michigan's natural resources' and environmental statutes, Part 115 replaced provisions contained in Public Act 641 of 1978. However, the solid waste management provisions are still commonly referred to as "Public Act 641.") The proposed legislation would alter the methods by which funds are set aside to meet the closing costs for each landfill in the state, and also ensure that these financial assurance provisions are consistent with subtitle D of the federal Solid Waste Disposal Act (42 U.S.C. 6945), the federal law regulating solid waste. In addition to these changes, it is proposed that a new administration fee be established by which landfill owners and operators would pay a portion of the costs associated with managing the state's solid waste programs. The legislation is imperative as a result of a proposed $1.04 million reduction in the Department of Environmental Quality's Solid Waste Management Division budget for fiscal year 1996-97, and a Department of Management and Budget (DMB) decision that this reduction should be offset by increased costs for solid waste disposal area owners and operators.

THE CONTENT OF THE BILLS:

The bills would amend Part 115 of the Natural Resources and Environmental Protection Act (NREPA) to require new financial assurance requirements from a person applying for a license to operate a landfill; to impose a solid waste program administration fee; to increase current construction and operating license fees; and to specify that, in a situation where a release of a hazardous substance at a licensed disposal area was solely from that disposal area, the required response activities would be those specified under Part 115 of the act. The bills are tie-barred to each other.

House Bill 5867 (MCL 324.11502 et. al.) would amend Part 115 of NREPA, concerning solid waste management, to specify new financial assurance requirements for an applicant for a license to operate a landfill. Under the bill, "financial assurance" would be defined to 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.

Definitions. "Corrective action" would be defined under the bill to mean the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydro geological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with subtitle D of the federal Solid Waste Disposal Act (42 U.S.C. 6945), or rules promulgated under that act. "Consistency review" would be defined to mean the evaluation of the administrative and technical components of an application for a permit, license, or for operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of the

act, rules promulgated under the act, and approved plans and specifications. "Insurance" would be defined under the bill to mean insurance that conformed to the requirements of the Code of Federal Regulations, provided by an insurer who had a certificate of authority to sell this line of coverage from the Michigan Commissioner of Insurance.

Financial Assurance. Currently, an applicant for an operating license for a disposal area must submit a surety bond (defined under the bill to mean a financial instrument executed on a form approved by the Department of Environmental Quality [DEQ], including a surety bond, 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 department) to the department to cover the cost of disposal area closing and post-closing monitoring and maintenance. An operating license applicant would be required, under the bill, to submit evidence of the required coverage by submitting a certificate of insurance that used wording approved by the department, and a certified true and complete copy of the insurance policy to the department. The bill would amend the act to modify the bonding requirements, as follows:

**The bond for a landfill must currently be in the amount of $20,000 per acre of licensed landfill, and $50,000 per acre of licensed landfill for a landfill that receives municipal solid waste incinerator ash. The money from the fees covers post-closure maintenance for a period of 30 years after the landfill is completed. The bill would require, instead, that an applicant submit the evidence of financial assurance established for a Type III landfill or a preexisting unit at a Type II landfill. The amount would have to be in the form of a bond in an amount equal to $20,000 per acre of licensed landfill within the solid waste boundary. In addition, a perpetual care fund would have to be maintained. Financial assurance for a Type II landfill that was an existing unit or a new unit would have to be in an amount equal to the cost, in current dollars, of hiring a third party to conduct closure, postclosure maintenance and monitoring, and, if necessary, "corrective action." (Note: The bill does not define types I, II, or III landfills. However, the types of landfills are delineated in administrative rules as follows: Type I landfills are for the disposal of industrial waste that has been characterized as "hazardous" under Part 111 of NREPA, which involves hazardous waste management; Type II landfills are municipal solid waste landfills, which receive household waste, some commercial waste, and nonhazardous industrial waste; and Type III landfills are landfills that are not municipal or hazardous waste landfills, and can include those that receive construction waste, demolition waste, and some "low hazard" industrial waste.)

**The bond for a landfill that receives municipal solid waste incinerator ash must currently be in an amount equal to $40,000 per acre of licensed landfill. Each bond must provide assurance for the maintenance of the finished landfill for a period of 30 years after closure. Under the bill, financial assurance would have to be provided in an amount equal to the cost, in current dollars, of hiring a third party to perform closure, postclosure maintenance and monitoring, and if necessary, "corrective action." In addition, an application for a Type II existing or new landfill would have to demonstrate financial assurance in accordance with the financial assurance requirements of the bill.

**Currently, a bond is required from a solid waste transfer facility, incinerator, processing plant, or other solid waste handling or disposal facility used in the disposal of solid waste. The bill would specify that a disposal area could be a combination of these facilities.

**Currently, an applicant for an operating license for a landfill may post a cash bond instead of a surety bond or certificate of deposit. The bill would specify, instead, that a landfill owner or operator could post a cash bond instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of the bill. The bill would require that a minimum amount equal to the remaining financial assurance amount, divided by the term of the operating license, would have to be paid to the department prior to licensure, with subsequent payments made annually in an amount equal to the remaining financial assurance, divided by the number of years remaining until the license expired.

**The act currently specifies that an applicant of a disposal area that is not a landfill who has accomplished closure or postclosure monitoring and maintenance may request a 50 percent reduction in the bond. The bill would specify, instead, that the owner or operator of the disposal area could request a 50 percent reduction in the bond during the two-year period after closure; at the end of the two-year period, the owner or operator could request that the department terminate the bond; and termination would be approved within 60 days provided that all waste and waste residues had been removed from the disposal area and that closure was certified.

**The act currently specifies that, if an applicant fails to comply with the closure and postclosure monitoring and maintenance requirements of the act, then the department may use the bond to fulfill those requirements. The bill would add that the bond could be used if the owner or operator, rather than the applicant,

failed to comply to the extent necessary to correct such violations, after the DEQ had issued a violation notice or other order, and provided seven days' notice and opportunity for a hearing.

**Currently, the act specifies that a landfill that receives municipal solid waste incinerator ash must provide a bond or a letter of credit in an amount equal to $2 million, in addition to the required bond of $50,000 per acre of licensed landfill, to provide assurance for remedial action for a 30-year period after the landfill is closed. The bill would delete this provision.

The bill would specify that, under the terms of a surety bond, letter of credit, or insurance policy, the issuing institution would have to notify both the DEQ and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator did not extend the bond's effective date, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice by the issuing institution, the department could draw on the bond. The bill would also permit a person required to provide financial assurance to request a reduction in a bond, based upon the value of the applicant's perpetual care fund. The DEQ would be required to grant such a request within 60 days unless there were sufficient grounds for denial. If the request were granted, the DEQ would require a bond in an amount such that for Type II landfills, and Type II landfills that were preexisting units, the amount of money in the perpetual care fund, plus the amount of the reduced bond, equaled the maximum amount required in a fund, as provided under the bill.

The bill would also require that the DEQ release a bond if the amount in the perpetual care fund exceeded the amount of the financial assurance required for a Type II landfill or a preexisting unit at a Type II landfill. In addition, if money were disbursed from the fund prior to closure of a landfill, then the department could require a corresponding increase in the amount of bonding required, if necessary to meet the requirements of the bill.

Financial Test Using Standardized Costs. The bill would define "financial test" to mean a corporate or local government financial test or guarantee approved for Type II landfills under subtitle D of the federal Solid Waste Disposal Act. An owner or operator could use a single financial test for more than one facility. Information submitted to the department to document compliance with the test would have to include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the test, the owner or operator would have to aggregate the sum of the closure, postclosure, and "corrective action" costs it sought to assure with any other environmental obligations assured by a financial test under state or federal law. In addition, an applicant could utilize a financial test for up to, but not exceeding, 70 percent of a closure, postclosure, and "corrective action" cost estimate.

Effective April 9, 1997, an application for a Type II landfill that was an existing unit or new unit would have to demonstrate that a combination of the perpetual care fund, bonds, and financial capability, as evidenced by a financial test, would provide financial assurance in an amount equal to or greater than the sum of a standard closure cost estimate, a standard postclosure cost estimate, and the "corrective action" cost estimate, if any, as follows:

-- A standard closure cost estimate would be based upon the sum of a base cost of $20,000 per acre to construct a compacted soil final cover using on-site material; a supplemental cost of $20,000 per acre to install a synthetic cover liner, if required under the act; a supplemental cost of $5,000 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used in lieu of low permeability soil in a composite cover; and a supplemental cost of $5,000 per acre to construct a passive gas collection system in the final cover, unless an active gas collection system had been installed at the facility.

-- A standard postclosure cost estimate would be based upon the sum of a final cover maintenance cost of $200 per acre per year; a leachate disposal cost of $100 per acre per year; a leachate transportation cost of $1,000 per acre per year, if leachate is required to be transported off-site for treatment; a groundwater monitoring cost of $1,000 per well per year; and a gas monitoring cost of $100 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary, all adjusted for inflation.

-- The "corrective action" cost estimate would be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform "corrective action" in accordance with the act. In addition, in lieu of using some or all of the standardized costs specified, an applicant could estimate the site specific costs of closure or postclosure maintenance and monitoring.

Financial Test Using Estimate of Costs. In lieu of using standardized costs, an applicant could estimate the site specific costs of closure or postclosure maintenance and monitoring, using a written estimate, in current dollars,

of the cost of hiring a third party to perform the activity. Site specific cost estimates would be based on the following:

-- For closure, the cost to close (excluding salvage value) the largest area of the landfill ever requiring a final cover at any time during the active life, if the extent and manner of its operation would make closure the most expensive, in accordance with the approved closure plan.

-- For postclosure, the cost to conduct postclosure maintenance and monitoring, in accordance with the approved postclosure plan for the entire postclosure period.

Adjustment for Inflation. A landfill owner or operator would be required, during the active life of the landfill, and during the postclosure care period, to annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation, by multiplying the cost estimate by an inflation factor derived from the most recent Bureau of Reclamation composite index published by the U.S. Department of Commerce, or another index that is more representative of the costs of closure and postclosure monitoring and maintenance, as determined appropriate by the department. The adjustment would have to be documented and placed in a facility's operating record.

Reduction in Financial Assurance. An application for a reduction in the approved cost estimates and corresponding financial assurance for a landfill would have to include certification that the following had been completed:

-- Partial closure of the landfill, which would include certification under the seal of a licensed professional engineer certifying that a portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and rules promulgated under the act, and the maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

-- Final closure of the landfill, including certification under the seal of a licensed professional engineer certifying that closure of the landfill unit has been fully completed in accordance with the landfill's approved closure plan. Within 60 days of receiving a certification under this subsection, the department would have to perform a "consistency review" -- defined under the bill to mean an evaluation of the administrative and technical components of an application for a permit, license, or for operating conditions in the course of inspection, to determine consistency with the requirements and rules of the act and approved plans and specifications -- of the submitted certification and notify the owner or operator that the closure estimate could be reduced by 100 percent if the review was approved. The department would also have to provide the owner or operator with a detailed written statement within 60 days indicating the reasons why it had determined that closure certification had not been conducted appropriately.

-- Postclosure maintenance and monitoring. A reduction in the postclosure cost estimate and corresponding financial assurance for one year could be requested if the landfill had been monitored and maintained in accordance with the approved postclosure plan.

A landfill owner or operator could request a reduction in the amount of one or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equaled the required amount due, the department would have to approve the request. In addition, an owner or operator who requested that the department approve a financial assurance reduction for performance of the activities would be required to do so on a department-prepared form and the department would have to grant written approval, or, within 30 days of receiving a request, issue a written denial stating the reason.

Trust Fund or Escrow Account. A landfill owner or operator could establish a trust fund or escrow account to fulfill the financial assurance requirements specified in the bill. Payments into a trust fund or escrow account would have to be made annually over the term of the first operating license issued after the effective date of the bill. The first payment would have to be made prior to licensure, in an amount equal to at least the required portion of the financial assurance that was to be covered by the fund or account, divided by the term of the operating license. Subsequent payments would have to be in an amount equal to the remaining financial assurance requirement, divided by the number of years remaining until the license expired. In addition, if the owner or operator established a fund or account after having used one or more alternate forms of financial assurance, the initial payment would have to be at least the amount that the fund would contain if established initially and annual payments were made. The department could authorize the release of funds from a trust fund or escrow account -- including all interest or earnings -- if it were demonstrated that the value of the fund or account exceeded the owner's or operator's financial assurance obligation.

Perpetual Care Fund. Currently, a landfill owner or operator must maintain a perpetual care fund for the closure, monitoring, maintenance, and response activity at a landfill. The fund is maintained by a tipping fee of 75 cents per ton of solid waste disposed of after June 17,

1990. The bill would add that a fund could be used to demonstrate financial assurance for Type II landfills. Under the bill, deposits would have to be made twice a year until a fund reached the maximum required amount of $1,156,000. The maximum amount would be adjusted annually for inflation by multiplying the amount by an inflation factor derived from the most recent Bureau of Reclamation composite index, published by the U.S. Department of Commerce, or another index that the department considered more representative of closure, postclosure monitoring, and maintenance costs. The bill would also delete the current provision which prohibits disbursements from a fund in situations where the amount of the fund has fallen below the required level and the requirement that closure and response activities in such cases be borne by the owner and operator of the landfill.

House Bill 5867 would also delete current provisions requiring that the custodian of a perpetual care fund invest its money in certain federally insured obligations. Instead, the bill would specify that, until a fund reached the maximum required amount, the custodian would have to credit the interest and earnings of a fund to the fund itself, after which earnings would be distributed as directed by the owner or operator. The bill would also specify that the owner or operator could request disbursement of funds, semi-annually, when money in the fund exceeded the "maximum required fund amount." The "maximum required fund amounts" would be as follows: for those landfills containing only the materials specified under the act, an amount equal to ½ of the maximum required fund amount, or $578,000; and for all other landfills, an amount equal to the maximum required fund amount, or $1,156,000. The DEQ would be required to approve the disbursement provided that the total amount of financial assurance maintained met the financial assurance requirements provided under the bill. In addition, the bill would delete the current requirement that the accounts of a fund be kept on a calendar year basis, and would require that an accounting be made to the DEQ within 30 days following the close of the state fiscal year.

Currently, the act provides that, 30 years after a landfill is closed, 50 percent of any money in its perpetual care fund must be deposited in the Environmental Response Fund, and 50 percent must be returned to the owner of the disposal area, unless a contract with the landfill operator provides otherwise. The bill would specify, instead, that, upon department approval of a request to terminate financial assurance for a landfill, the money in the fund would be disbursed only to the owner of the disposal area, with the same conditions. The bill would also delete the current requirement that money remaining in a fund must be disbursed to the landfill owner, except in situations where the department has denied a request for disbursement of the money in a fund, and has instead deposited all the money into the Environmental Response Fund because a landfill owner or operator has failed to conduct closure, monitoring, maintenance or response activities.

Other Provisions. Under the bill, a landfill owner or operator would be required to submit an annual report to the state, and to the county and municipality in which the landfill was located, containing information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin. The bill would require that the department submit to legislature by September 1, 1996 a plan to gather data on the amount of recyclable materials recovered in the state. In addition, the bill would specify that the department could recover administrative fees from a landfill owner or operator's perpetual care fund in the same manner as it could require the disbursement of money from a fund for closure, postclosure, or "corrective action" costs.

Municipal Solid Waste Incinerators. House Bill 5867 would amend the act to delete the current requirement that the generation and handling of municipal solid waste incinerator ash be regulated under Part 115 of the act and not Part 111. Under the act, municipal solid waste incinerator ash may only be disposed of in landfills that meet certain landfill design requirements. The bill would amend certain landfill design specifications to require that they, instead, conform to requirements specified under the Administrative Code. The bill would also amend current requirements concerning the capping of landfills following their closure to specify only that they be capped either by a design approved by the DEQ, or by six inches of top soil with a vegetative cover; two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation; an infiltration collection system; a synthetic liner at least 30 mils thick; and two feet of compacted clay with a maximum hydraulic conductivity of 1 x 10 -7 centimeters per second. The bill would also specify that municipal solid waste incinerator ash may be disposed of in a municipal solid waste landfill, as defined by the Administrative Code, rather than in a Type II landfill, as defined by the code; and would delete the requirement that ash from a Type II landfill must be tested by a specific laboratory and meet certain requirements specified under the Administrative Code. The bill would also delete current provisions that permit the temporary storage of municipal solid waste incinerator ash, as well as provisions requiring incinerator owners or operators to collect 24-hour composite samples and submit them to the department for approval.

Senate Bill 941 (MCL 324.11509 et al.) would amend Part 115 of NREPA to impose a solid waste program

administration fee, which would be apportioned pro rata among operating landfill owners based on the total assets in each landfill's perpetual care fund, and deposited into a Solid Waste Management Fund, which would be established under the bill, and which would be allowed to accrue $1.04 million annually. The bill would also increase current construction and operating license fees, and add a new section to Part 201 of the NREPA, which regulates environmental response activities, to specify that, notwithstanding any other provisions of the act, in a situation where a release at a licensed disposal area was solely a release from that disposal area, and was discovered through the disposal area's hydro geological monitoring plan, the required response activities would be those specified under Part 115 of the act. This provision would not apply to releases from a disposal area after the postclosure monitoring period had been completed. The effective date of the bill would be October 1, 1996.

Solid Waste Program Administration Fee. The fee would be imposed upon landfill owners and operators. The annual cumulative total amount of the fee would be $1.04 million, as annually adjusted for inflation, beginning in 1997, using the Detroit Consumer Price Index. The fee would be apportioned among operating landfills on the basis of each landfill's pro rata share of the cumulative total of amounts maintained in individual perpetual care funds, as determined by the department. Each landfill owner and operator would be required to report the total amount of assets in its perpetual care fund within 30 days after the close of each state fiscal year; would receive notice of its assessed share within 60 days following the close of the state fiscal year; and would be required to pay the assessment within 90 days following the close of the state fiscal year. No individual landfill would receive credit for more than the established maximum required fund amount of $1.156 million, as established under House Bill 5867. The fees collected under this provision would be deposited into the solid waste staff account of the Solid Waste Management Fund established under the bill.

Solid Waste Management Fund. The bill would establish the Solid Waste Management Fund, which would contain a solid waste staff account and a perpetual care account. Money in the fund would remain there and would not lapse to the general fund at the close of the fiscal year. The bill would restrict appropriations from the solid waste staff account for the following purposes:

*To prepare generally applicable guidance regarding the solid waste permit and license program, or its implementation or enforcement.

*To review and act upon any permit or license application, revision, or renewal, including the cost of public notices and hearings.

*To perform an advisory analysis when a construction permit application is submitted.

*For general administrative costs of running the permit and license program, including tracking and data entry.

*To inspect licensed disposal areas and open dumps.

*To implement and enforce the conditions of any permit or license.

*To conduct groundwater monitoring audits at disposal areas that were, or had been, licensed under the act.*To review and act upon "corrective action" plans for disposal areas that were, or had been, licensed under the act.

*To review certifications of closure.

*To perform postclosure maintenance and monitoring inspections and review.

*To review bonds and financial assurance documentation at disposal areas that were, or had been, licensed under the act.

Under the bill, money from the perpetual care account could be expended only to conduct the following activities at licensed disposal areas: postclosure maintenance and monitoring at a disposal area, where the owner or operator was no longer required to do so; and closure or postclosure maintenance and monitoring and "corrective action" at a disposal area where the owner or operator had failed to do so. In the latter situation, money would be expended from the account only after funds from any perpetual care fund or other financial assurance mechanisms held by an owner or operator had been expended and the department had used reasonable efforts to obtain funding from other sources.

Construction Fees. Currently, under the act, construction permit fees for solid waste disposal areas are based on the size of a facility, waste volume and type, and hydro geological characteristics. The bill would replace the current schedule of construction permit fees with one that would be based on whether the facility accepted low hazard, industrial, or municipal solid waste, as follows:

New sanitary landfills:	
Municipal solid waste	$1,500
Industrial waste	1,000
Type III, limited to low hazard industrial waste	750
Lateral expansion of a sanitary landfill:	
Municipal solid waste	$1,000
Industrial waste	750
Type III, limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste	500
Vertical expansion of existing landfill:	
Municipal solid waste	$750
Industrial waste	500
Industrial waste, limited to low hazard waste, construction and demolition waste, or other nonindustrial waste	250
Solid waste transfer facility:	
New municipal solid waste facility, or a combination of municipal solid waste and industrial or construction and demolition waste	$1,000
New industrial, or construction and demolition waste	500
Expansion of existing facility for any type of waste	250

(The bill would specify that a construction permit application could be submitted for a solid waste transfer facility, a solid waste processing plant, other disposal area, or a combination of these.)

Permit application fees would be deposited into a new Solid Waste Staff Account which would be part of a Solid Waste Management Fund established under the bill.

The bill would require that the DEQ refund the entire fee in situations where an application has been returned to the applicant as administratively incomplete; if a permit should be denied, or an application withdrawn, the DEQ would be required to refund one-half the fee specified under the bill for a solid waste transfer facility. The bill would also increase, from six to twelve months, the period after which an applicant could resubmit an application and the refunded portion of a fee when a permit has been denied or withdrawn.

Operating License Fees. Currently, the fee for an operating license or for renewal of an operating license is $100. The bill would, instead, establish fees ranging from $250 to $30,000, depending on the amount of waste received daily, for a Type II landfill operating license. The fee for a Type III landfill would be $2,500. The fee for a solid waste processing plant, solid waste transfer facility, other disposal area, or combination of these entities would be $500. The fees would be deposited into the perpetual care account of the Solid Waste Management Fund. Operating licenses would be valid for a two-year period. The same fees would be charged for applications for operating license renewals. The bill would also permit a person authorized to operate more than one type of disposal area at the same facility to apply for a single license, and pay a single fee, equal to the sum of the applicable application fees.

In addition, applications would have to contain information on the type of disposal area proposed, evidence of bonding, evidence of financial assurance adequate to meet the new provisions of House Bill 5867, the maximum waste slope in the active portion of the landfill, an estimate of remaining permitted capacity, and documentation on the amount of waste received at the disposal area during the previous license period, or expected to be received, whichever was greater. The bill would also specify that, if construction of a disposal area or a portion of a disposal area were incomplete when an operating permit was applied for, then the DEQ would require additional construction certification of that portion of the disposal area during intermediate progression of the operation.

The bill would specify that issuance of an operating license authorized the licensee to accept waste in certified portions of the disposal area for which a bond had been established under the financial assurance provisions of House Bill 5867, and that, if the construction of a portion of a licensed landfill were incomplete at the time of application, then the owner or operator would have to submit a certification under the seal of a licensed professional engineer, verifying that the construction of that portion had proceeded according to the approved plans at least 60 days prior to the anticipated date of waste disposal. If the department did not deny the certification within 60 days of receipt, then the owner or operator could accept waste for disposal in the certified portion. In the case of a denial, the department would be required to issue a written statement stating the reasons why the construction or certification was inconsistent with the provisions of Part 115 or rules promulgated under the act or the approved plans.

Financial Assurance. The bill would specify that the owner or operator of a disposal area must provide continuous financial assurance coverage until released from financial assurance requirements by the department. In addition, the bill would permit the owner or operator of a disposal area who had completed an approved postclosure plan and postclosure maintenance and monitoring of a landfill to request that the financial assurance requirements specified in House Bill 5867 be terminated by submitting a statement that

the approved postclosure plan and monitoring and maintenance had been done, and that the landfill was not subject to "corrective action". The department would be required to perform a "consistency review" of the statement, and, if approved, notify the owner or operator that the financial assurance would no longer be required, return or release all financial assurance mechanisms, and notify the perpetual care fund's custodian that money should be disbursed. Also, the department would have to provide the owner or operator with a detailed written statement of the reasons why it had determined that postclosure maintenance and monitoring and "corrective action", if any, had not been conducted in accordance with the act, its rules, or an approved postclosure plan.

Other Provisions. Currently, an applicant for a construction permit must, among other things, review a disposal area's plans to determine if it complies with the provisions of the act. The bill would specify, instead, that an applicant must conduct a "consistency review", and would add that a written acknowledgment that the application package complied with the requirements of the act, and rules promulgated under the act, would have to be received before a permit was issued.

The bill would also specify that a person could apply to construct more than one type of disposal area at the same facility under a single permit, and that the application fee would be equal to the sum of the applicable fees provided under the bill. In addition to current requirements, the bill would require that an application for a construction permit would have to include the design capacity of a disposal area, and other information specified by rule. Further, the bill would require that a fee of $250 be included with an application for a modification to a construction permit or for renewal of a construction permit that had expired. The bill would also specify that increases in final elevations that did not result in an increase in design capacity or a change in the solid waste boundary would be considered a modification, and not a vertical expansion.

The bill would also delete current requirements that director of the Department of Public Health be consulted, and a determination of a violation be made by that director, before the department could issue an order suspending a permit or license.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency (HFA), the provisions of House Bill 5867 would have no impact on state funds. However, the provisions of Senate Bill 941 would generate $1.2 million annually: approximately $1.04 million would be received from the new solid waste program administration fee; and an additional $187,000 would be collected annually from the new operating license fees. These revenues would be deposited into a perpetual care account in the Solid Waste Management Fund. However, the HFA estimates that an indeterminate loss in state funds would result from the provisions of the bill. Since the bills would reduce the amount that landfill owners and operators must currently deposit in their perpetual care funds, there would be a loss of up to $12 million in refunds to those who had more than $1.156 million in their perpetual care funds, and the state would no longer receive 50 percent of the balance in each perpetual care fund. In addition, the cleanup and reclamation costs for solid waste landfills that close is unknown, as are the long-term maintenance costs for closed facilities. (7-25-96)

ARGUMENTS:

For:

House Bill 5867 would establish new financial assurance requirements: costs to landfill owners would be reduced, since they would no longer be required to make deposits into a perpetual care fund after the fund reached a maximum required amount; more financial assurance options would be provided to landfill owners, including the use of a financial test; and financial assurance would be based on the true anticipated costs for closure, post-closure, and "corrective action," rather than the current fee, which is based on acreage, and which may be either too high or too low for a particular landfill. It is said that these provisions would be more flexible and also more site-specific than current requirements. In addition, the state will give up its claim to 50 percent of the funds remaining in perpetual care accounts 30 years after landfills are closed. In exchange for these modifications, according to an agreement reached between a subcommittee of the House Conservation, Environment and Great Lakes Committee and members of the solid waste disposal industry, construction and operating fees for landfill owners would be increased and a new solid waste program administration fee would be established under the provisions of Senate Bill 941 to make up for a $1.04 million reduction in the department's fiscal year 1996-97 budget.

For:

The financial assurance provisions of House Bill 5867 would guarantee that funds are set aside to meet the closing costs for each landfill in the state. The provisions are of particular importance as a means of providing "corrective action" at facilities, including "orphan" sites, or landfills at which those who created

environmental contamination cannot be found. The provisions of the bill would provide for monitoring costs for cleanup and maintenance for 30 years after each landfill is closed. The bill would also assure that the financial assurance provisions of the state's solid waste management regulations are consistent with the financial assurance provisions of subtitle D of the federal Solid Waste Disposal Act. Further, Senate Bill 941 would replace resources lost as a result of the proposed $1.04 million reduction in the department's budget for fiscal year 1996-97, and would allow the department to maintain its existing regulatory program for solid waste disposal areas. The House subcommittee formed to restructure the state's solid waste management regulations estimates that, over time, Senate Bill 941 would result in an increase of $17 million in state funds. A comparison of current requirements regarding perpetual care funds and those proposed in the bill, supplied by the House subcommittee, indicates that, under current regulations, each landfill owner's perpetual care fund would contain a balance of $1.2 million at the end of the required waiting period of thirty years after a landfill is closed. If 40 landfills were closed, the total balance in perpetual care funds would be $48 million ($1.2 million x 40). The state's share of this amount would be $24 million (50 percent of $48 million). Under the provisions of the bill, however, operating license fees imposed on the owners of disposal areas would be deposited into the perpetual care account of the new Solid Waste Management Fund established under the bill. The comparison report indicates that $195,000 would be collected in operating license fees under this provision. (The House Fiscal Agency estimates that the total amount collected in operating license fees would be $187,000.) The comparison report estimates that, if this amount were invested at 6 percent annual interest during the 20-year period that the average landfill is in operation and the required 30-year waiting period after a landfill is closed, then the fund balance at the end of the 50-year period would amount to $41 million.

Against:

Some concern has been expressed by environmentalists that the amounts required under the bills will prove to be inadequate to fund long term monitoring and closure costs. The act's financial assurance provisions were established to ensure that funds are available to meet the costs of monitoring a waste disposal site and for any response activities that may be required for a period of 30 years after a disposal area is closed, and are of particular importance in the case of "orphan" sites (for example, in the case of a leaking landfill for which no responsible party is available to accept the financial responsibility for cleanup). To fulfill these financial assurance requirements, the owner or operator of a disposal area must currently file a surety bond, and the owner or operator of a disposal area that is a landfill must, in addition, maintain a perpetual care fund. The act specifies that, 30 years after a landfill has been closed, the state and the landfill owner will split equally the remaining balance in each perpetual care fund. Senate Bill 941 would delete this provision, and specify, instead, that all the money remaining in a fund be disbursed to the landfill owner. In exchange, the construction and operating fees imposed on owners and operators would be increased under the provisions of the bill. However, since the state's solid waste management regulations have been in effect for a relatively short period of time, the costs involved in closing a landfill according to the state's regulations are unknown. Some feel that the state should examine the costs incurred for these procedures by other states before the proposed changes are implemented. In the alternative, to assure that a stable, long-term source of funding is provided for orphan share cleanups, it is suggested that the required 75 cent tipping fees for solid waste disposal be increased.

Analyst: R. Young

■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.