

ALLOW USE OF PERPETUAL CARE FUND BONDS

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Senate Bill 404 (Substitute H-2 as reported)

Sponsor: Sen. Jack Brandenburg

House Committee: Natural Resources

Senate Committee: Finance

Complete to 11-14-13

A SUMMARY OF SENATE BILL 404 AS REPORTED FROM HOUSE COMMITTEE

Part 115 (Solid Waste Management) of the Natural Resources and Environmental Protection Act requires every landfill owner or operator to maintain a perpetual care fund (PCF) for 30 years after the final closure of a landfill, in addition to meeting other financial assurance requirements. Generally, PCFs are intended as a funding mechanism in the event the state has to assume responsibility for maintenance and/or postclosure activities on behalf of a landfill operator. Currently, Part 115 requires PCFs to be maintained as cash accounts that are established as either trust or escrow accounts.

Senate Bill 404 (S-1) would amend Part 115 to allow a landfill owner or operator to establish the required PCF through the use of non-cash surety bonds and letters of credit (referred to in the bill as perpetual care fund bonds).

Additionally, the bill would make the following changes to Part 115:

- Allow a trust or escrow account established as a PCF to be replaced with a perpetual care fund that is established as a perpetual care fund bond and require the DEQ director to authorize the custodian of the PCF to disperse the money in the trust or escrow account to the landfill owner.
- Require a landfill owner or operator that uses a perpetual care fund bond to establish a standby trust or escrow account to collect all payments made under the terms of the bond. Standby trusts would be exempt from the required increases to a PCF and annual accounting variations until the trust is funded as required by the bill.
- Require the issuing institution to deposit the proceeds of a PCF bond into the standby trust or escrow account, unless the DEQ has agreed to the expiration or cancellation of the PCF bond, if a PCF bond is allowed to expire or is canceled and is not extended by the operator and alternate financial assurance is not established within 90 days of expiration or cancellation.
- Eliminate the requirement that a landfill owner or operator pay an amount equal to the remaining financial assurance over the term of an operating license when using a cash bond to fulfill the remaining financial assurance requirements under Section 11523.

- Require increases to a PCF to be calculated based on solid waste disposed of in the landfill as of the end of the fiscal year and to be made within 30 days after the end of each fiscal year.
- Eliminate a provision allowing the interest and earnings of a PCF to be used to pay the solid waste management program administration fee or the surcharge required under Section 11525a, which is assessed on each cubic yard of waste disposed of in a landfill.
- Exempt a perpetual care fund bond from a provision that allows the DEQ to use a bond that has been posted to satisfy financial assurance requirements for closure and postclosure monitoring and maintenance if an owner fails to comply with the requirements of Part 115 to correct a violation.
- Include a perpetual care fund bond among the instruments on which the DEQ may draw if a landfill owner or operator does not extend a bond's effective date or establish alternative financial assurance.
- Require a landfill owner or operator to establish alternative financial assurance within 60 days if their financial assurance requirements are fulfilled through a bond and the institution issuing or holding the bond becomes the subject of bankruptcy action or has its authority to issue or hold bonds suspended or revoked.

"*Perpetual care fund bond*" would mean a surety bond, an irrevocable letter of credit, or a combination of these instruments in favor of and on a form approved by the department by which a perpetual care fund is established.

FISCAL IMPACT:

Senate Bill 404 would have no significant fiscal impact to the State of Michigan or local units of government.

BACKGROUND INFORMATION AND DISCUSSION:

Part 115 requires every landfill owner or operator to maintain a perpetual care fund (PCF) for 30 years after the final closure of a landfill, in addition to meeting other financial assurance requirements; a PCF is a funding mechanism in the event the state has to assume responsibility for maintenance and/or postclosure activities on behalf of a landfill operator. Currently, PCFs must be maintained as cash accounts that are established as either trust or escrow accounts. Operators must make regular deposits into the fund until the reaches its maximum statutory amount.

While PCFs must be cash accounts, landfill operators are currently able to meet all other financial assurance obligations through the use of non-cash financial instruments (typically surety bonds and lines of credit). Senate Bill 404 would amend Part 115 to allow those same types of non-cash instruments (referred to in the bill as perpetual care fund bonds) to be used to finance PCFs. The non-cash instruments serve the same function of providing financial assurance to the department that funds for maintenance and/or postclosure activities will be available if needed but do not require the landfill

operator to commit large amounts of cash. According to testimony, commitment of such large amounts of cash for long periods of time can hinder an operation's ability to make strategic long-term investments that are in the best interest of the landfill.

Accordingly, Senate Bill 404 would provide flexibility to landfill operators in deciding how to finance PCFs while maintaining the financial assurance requirements under Part 115.

POSITIONS:

DTE Energy supports the bill. (11-5-13)

Michigan Waste Industry Association supports the bill. (10-15-13)

Michigan Department of Environmental Quality is neutral on the bill. (11-5-13)

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■ 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.