



Sub. H.B. 540

123rd General Assembly

(As Reported by H. Energy & Environment)

Reps. Schuring, Bender

BILL SUMMARY

Construction and demolition debris fees

- Eliminates the current annual license fee for construction and demolition debris facilities and instead establishes a 20¢ per cubic yard or 60¢ per ton fee on the disposal of construction and demolition debris.
- Requires monthly remittance of disposal fees from owners or operators of construction and demolition debris facilities to local boards of health or the Director of Environmental Protection, and allows quarterly remittance of the fees.
- Authorizes municipal corporations and townships to appropriate a portion of the disposal fees for specified purposes.
- Establishes a construction and demolition debris facility license application fee of \$100.

Definition of "construction and demolition debris"

- Includes in the definition of "construction and demolition debris" "construction materials" and certain de minimus items, and excludes from that definition specified items.
- Defines "construction materials" to include specified construction-related items, and authorizes the Director to adopt rules identifying other materials as construction materials.

Other construction and demolition debris facility provisions

- Authorizes a board of health or the Director to deny a license for a new construction and demolition debris facility or modification of a facility if the board or Director finds that the applicant for the license has a history of noncompliance with the Construction and Demolition Debris Law and certain other specified environmental laws.
- Prohibits the siting of construction and demolition debris facilities over a known underground mine or over an unknown abandoned underground mine in certain counties if it is determined that there is a high probability of an unknown abandoned underground mine in the area.
- Prohibits the open dumping of construction and demolition debris, and defines "open dumping."

Borrow pits

- Transfers the regulatory authority to oversee certain activities related to borrow pits from the Division of Mineral Resources Management in the Department of Natural Resources to the Environmental Protection Agency.
- Exempts certain activities related to borrow pits that take place at sanitary landfills from all fees levied under the other Surface Mining Law.

Solid waste disposal fees

- Makes several changes regarding the collection and payment of the state solid waste disposal fees, including authorizing the quarterly payment of moneys from the fees in lieu of monthly payments.

CONTENT AND OPERATION

Elimination of construction and demolition debris facility license fee; establishment of disposal fee

Current law establishes a fee of \$3,000 for an annual license for a construction and demolition debris facility. The board of health of a health district may issue licenses and collect the license fee only if the Director of Environmental Protection has approved the district to implement the construction and demolition debris program within its jurisdiction. A board of health issuing licenses is required

to retain \$1,500 of each fee collected; the remainder must be forwarded to the Director. In jurisdictions where there is no approved health district to administer the program, the Director must issue licenses and collect all license fees. A board of health is required to use the moneys from the license fee for the purpose of administering and enforcing the construction and demolition debris program within its jurisdiction if it is approved to do so. Similarly, moneys received by the Director must be used by the Environmental Protection Agency for the administration of the construction and demolition debris program. (Sec. 3714.07, repealed.)

The bill repeals the annual license fee and in its place establishes a 20¢ per cubic yard or 60¢ per ton fee, as applicable, on the disposal of construction and demolition debris at a construction and demolition debris facility. In estimating the fee based on cubic yards, the owner or operator of a construction and demolition debris facility must utilize the maximum cubic yard capacity of the container, or the hauling volume of the vehicle, that transports the construction and demolition debris to the facility. If basing the fee on tonnage, the owner or operator must use certified scales to determine the tonnage of construction and demolition debris that is transported to the facility.

The bill requires the owner or operator of a construction and demolition debris facility to collect the fee as a trustee for the health district having jurisdiction over the facility, if that district is approved to administer the construction and demolition debris program within its jurisdiction, or for the state. The owner or operator must prepare and file with the appropriate board of health or the Director monthly returns indicating the total volume of construction and demolition debris received for disposal at the facility and the total amount of moneys required to be collected on the construction and demolition debris disposed of during that month. Not later than 30 days after the last day of the month to which the return applies, the owner or operator must mail to the board of health or the Director the return for that month together with the moneys required to be collected on the construction and demolition debris disposed of during that month. The owner or operator may request, in writing, an extension of not more than 30 days after the last day of the month to which the return applies. A request for extension may be denied. If the owner or operator submits the moneys late, the owner or operator must pay a penalty of 25% of the amount of the moneys due for each month that they are late.

A board of health must transmit 2¢ per cubic yard or 6¢ per ton, as applicable, of the moneys collected from a construction and demolition debris facility to the Director not later than 45 days after the receipt of the moneys. The moneys retained by the board must be paid into a special fund and used solely to administer and enforce the construction and demolition debris program.

The Director is required to transmit all moneys received from boards of health and all moneys from the disposal fee collected by the Director to the

Treasurer of State to be credited to the Construction and Demolition Debris Facility Oversight Fund, which the bill creates in the state treasury. The fund is required to be administered by the Director, and moneys credited to it must be used exclusively for the administration and enforcement of the construction and demolition debris program. (Sec. 3714.07(A).) The bill provides that the fund is a continuation of the existing Construction and Demolition Debris Facility Oversight Fund, which the bill eliminates, and that moneys credited to the existing fund must be used for the purposes specified in the bill (Section 3).

Quarterly payment of fees

The bill authorizes a board of health or the Director to enter into an agreement with the owner or operator of a construction and demolition debris facility for the quarterly payment of the moneys collected from the disposal fee. The board of health must notify the Director of any such agreement. Not later than 45 days after receipt of the quarterly payment, the board must transmit 10% of the amount of the moneys received from the payment to the Director. The moneys retained by the board of health must be deposited in the special fund of the health district discussed above. Moneys sent to the Director must be credited to the new Construction and Demolition Debris Facility Oversight Fund. (Sec. 3714.07(B).)

Municipal corporation and township share

If a construction and demolition debris facility is located within the territorial boundaries of a municipal corporation or the unincorporated area of a township, the municipal corporation or township may appropriate up to 3¢ per cubic yard or up to 9¢ per ton of the disposal fee required to be paid by the facility for the same purposes that a municipal corporation or township may levy a solid waste disposal fee under the Solid, Infectious, and Hazardous Waste Law.¹ The legislative authority of the municipal corporation or township may appropriate the moneys from the fee by enacting an ordinance or resolution establishing the amount of the fee to be appropriated. Upon doing so, the legislative authority must mail a certified copy of the ordinance or resolution to the board of health of the health district in which the construction and demolition debris facility is located or to the Director if the facility is located in a health district that is not approved to administer the

¹ *That law allows a disposal fee to be levied by a municipal corporation or township for the purposes of defraying the added costs to the municipal corporation or township of maintaining roads and other public facilities and of providing emergency and other public services and compensating the municipal corporation or township for reductions in real property tax revenues due to reductions in real property valuations resulting from the location and operation of a solid waste disposal facility within the municipal corporation or township (sec. 3734.57(C)).*

construction and demolition debris program. Upon receipt of the copy of the ordinance or resolution and not later than 45 days after receipt of moneys collected from the fee, the board or the Director, as applicable, must transmit to the treasurer or other appropriate officer of the municipal corporation or clerk of the township that portion of the moneys collected from the disposal fee by the owner or operator of the facility required by the ordinance or resolution to be paid to that municipal corporation or township.

Moneys received by the treasurer or other appropriate officer of a municipal corporation must be paid into the general fund of the municipal corporation. Moneys received by the clerk of a township must be paid into the general fund of the township. The treasurer or other officer of the municipal corporation or the clerk of the township, as appropriate, must maintain separate records of the moneys received. The legislative authority of a municipal corporation or township may cease collecting moneys by repealing the ordinance or resolution establishing the amount to be collected. (Sec. 3714.07(C).)

License application fee

The bill provides that each application for a license or license renewal for a construction and demolition debris facility must be accompanied by a nonrefundable application fee of \$100. With respect to a license renewal, a person who submits an application after the deadline for submission must pay an additional 10% of the amount of the application fee for each week that the application is late. Proceeds from the application fee collected by a board of health must be deposited in the special fund of the health district discussed above, and proceeds from the application fee collected by the Director must be deposited in the new Construction and Demolition Debris Facility Oversight Fund. (Sec. 3714.06(C).)

Definition of "construction and demolition debris"

Under current law, "construction and demolition debris" means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure ("physical structure built by humans" under the bill), including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. The bill expands the definition to include: (1) construction materials that are final off-specification, rejected, or damaged, and (2) incidental food, beverage containers, food packaging, newspapers, magazines, and nonhazardous construction material packaging that are generated and commingled by individuals who are working at the construction or demolition site where the materials were generated. (Sec. 3714.01(C).) Under the bill, "construction materials" means ceiling and floor tiles, counter-tops, doors, electrical wiring, electrical and plumbing fixtures, framing and finishing lumber, gutters, down spouts and awnings, paneling, plumbing, siding, sinks, bathtubs and showers, toilets,

ventilation and duct work, windows, and any other material that is identified as construction material by the Director in rules adopted under the bill (see **Items determined to be construction materials by rule**," below.) (Sec. 3714.01(D).)

Items determined to be construction materials by rule

The bill authorizes the Director to adopt rules in accordance with the Administrative Procedure Act identifying materials as construction materials that are not included in the statutory definition of that term. The Director must make the determination that any materials identified as construction materials in the rules are appropriate for disposal in a licensed construction and demolition debris facility and that the disposal is protective of human health and the environment.

In addition, the rules must establish criteria for determining if a given construction and demolition debris facility is eligible to receive construction materials authorized for disposal under the rules. The rules must require that an eligible facility, at a minimum, meet the standards for the design of construction and demolition debris facilities established in rules adopted under the Construction and Demolition Debris Law and may include standards for liners and leachate collection systems. (Sec. 3714.021(A).)

The board of health of a health district that is authorized to implement and enforce the construction and demolition debris program must determine, through application of the criteria established in rules, which construction and demolition debris facilities in that health district are eligible to receive construction materials. The Director must make the determination for a health district that is not authorized to implement or enforce the program. (Sec. 3714.021(B).)

Exclusions from the definition of "construction and demolition debris"

Current law excludes from the definition of "construction and demolition debris" materials identified or listed as solid or hazardous waste under existing law; materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, and slag; and reinforced or nonreinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material. The bill also excludes nontoxic bottom ash; liquids; batteries; fuel tanks; yard waste as defined in rules adopted under state law; appliances; asbestos or asbestos-containing materials or products that are subject to specified federal regulations; infectious waste as defined under existing law; sludges; material from pollution control waste; and low-level radioactive waste that is regulated under existing law. (Sec. 3714.01(C).)

Denial of a construction and demolition debris facility license for past violations

Under current law, a person who wishes to establish, modify, operate, or maintain a construction and demolition debris facility must receive a license to do so from the board of health in which the facility is or is proposed to be located if the board is authorized to implement and enforce the construction and demolition debris program or from the Director. The board or the Director must issue the license for the facility if the board or Director finds that the proposed facility or modification complies with the construction and demolition debris rules and statutory standards. The bill authorizes the board or Director to deny the license if the board or Director finds that the owner or operator of the proposed facility or proposed modified facility has been involved in any prior activity involving the transportation, storage, or disposal of construction and demolition debris or solid waste and does not have a history of compliance with the Construction and Demolition Debris Law or the Solid, Infectious, and Hazardous Waste Law, all rules and standards adopted under those laws, and similar laws and rules of other states, if applicable, that demonstrates sufficient reliability, expertise, and competency to operate a construction and demolition debris facility. (Sec. 3714.06(A).)

Prohibition against siting construction and demolition debris facilities over abandoned mines

Current law prohibits the Director or a board of health from approving the siting of a construction and demolition debris facility within certain flood-prone areas and within the boundaries of sole source aquifers. The bill also prohibits the siting of a construction and demolition debris facility within both of the following:

(1) The boundaries of a known abandoned or operational underground mine; and

(2) The boundaries of any county in which mine subsidence insurance coverage is required to be offered under existing law or is required to be offered on an optional basis if the Division of Geological Survey in the Department of Natural Resources has determined that the proposed location of any portion of the facility has a high probability of being within the boundaries of an unknown abandoned underground mine. Not later than ten days after the Director or a board receives an application for a license for the establishment of a new construction and demolition debris facility in one of the counties that is subject to the mine subsidence insurance statutes, the Director or the board must submit a description of the location of the proposed facility to the Division of Geological Survey. Not later than ten days after receiving the description, the Division must assess the proposed location of the facility through an analysis of available data and must inform the Director or the board, as applicable, if there is a high probability of an unknown abandoned

underground mine within the boundaries of the proposed facility. (Sec. 3714.03(C) and (D).)

Open dumping of construction and demolition debris

The bill prohibits anyone, unless authorized by rule, from disposing of construction and demolition debris by open dumping. The Director is authorized to adopt rules in accordance with the Administrative Procedure Act governing the open dumping of construction and demolition debris. The bill defines "open dumping" to mean the depositing of construction and demolition debris into a body or stream of water or onto the surface of the ground at a site that is not licensed as a construction and demolition debris facility under the Construction and Demolition Debris Law or as a solid waste facility under the Solid, Infectious, and Hazardous Waste Law. (Sec. 3714.14.)

Borrow pits

The bill requires the Director to adopt rules establishing requirements for the closure of borrow pits used for the extraction or movement of soil or minerals, other than through blasting, within a construction and demolition debris facility when the soil or minerals are used exclusively for construction or operations within that facility (sec. 3714.02(J)). Such activities are currently regulated by the Division of Mineral Resources Management in the Department of Natural Resources under the Other Surface Mining Law. To effectuate the change in regulatory authority, the bill amends the current definition of "surface mining" in that law by specifying that "surface mining" does not include the extraction or movement of soil or minerals, other than through blasting, within a licensed construction and demolition debris facility when the soil or minerals are used exclusively for construction or operations within the construction and demolition debris facility. (Sec. 1514.01(A).)

With respect to licensed sanitary landfills, the Division of Mineral Resources Management will continue to regulate the closure of borrow pits used for the extraction or movement of soil or minerals within a sanitary landfill when the soil or minerals are used exclusively for construction or operations within that facility. However, the bill exempts such a sanitary landfill from any fees levied under the Other Surface Mining Law. (Sec. 1514.20.)

Elimination of notice requirements for use of fill material

The bill repeals a prohibition in current law against anyone knowingly placing or causing to be placed any reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure as fill material on or in any land owned, leased, or controlled by the person, other

than on the site where the materials were so generated or removed, without providing written notice to the board of health of the health district in which the land is located or, if applicable, to the Director at least seven days prior to the first placement of any such materials as fill material at the off-site location. (Sec. 3714.13(F).)

Solid waste disposal fees

Current law requires the owner or operator of a solid waste disposal facility to collect the state solid waste disposal fees and file with the Director monthly returns indicating the total tonnage of solid wastes received for disposal at the gate of the facility and the total amount of the fees collected. With regard to the monthly returns, the bill retains the tonnage requirement, but requires the returns to indicate the total amount of the fees *required to be collected on the solid waste disposed of during that month*. In addition, the bill lowers the current penalty for the late payment of disposal fees from 50% of the amount of the fees to 25% of the amount of the fees. Finally, the bill authorizes the Director to enter into an agreement with the owner or operator of a solid waste disposal facility for the quarterly payment of moneys collected from the disposal fees. (Sec. 3734.57(A).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-11-00	p. 1494
Reported, H. Energy & Environment	11-16-00	p. 2391

H0540-RH.123/ss